



0000088954

**Transcript Exhibit(s)**

**Docket #(s):** T-20497A-06-0802

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**Exhibit #:** A1-A7, S1

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AZ CORP COMMISSION  
DOCKET CONTROL

2008 SEP 26 P 1:59

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Arizona Corporation Commission

DOCKETED

SEP 26 2008

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ARIZONA CORPORATION COMMISSION

Application and Petition for Certificate of Convenience and Necessity to Provide  
Intrastate Telecommunications Services

Mail original plus 13 copies of completed application to:

For Docket Control Only  
(Please Stamp Here)

Docket Control Center  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007-2927

AZ CORP COMMISSION  
DOCKET CONTROL

2006 DEC 28 A 11:51

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Please indicate if you have current applications pending  
in Arizona as an Interexchange reseller, AOS provider,  
or as the provider of other telecommunication services.

Type of Service: None

Docket No.: \_\_\_\_\_ Date: \_\_\_\_\_

Date Docketed: \_\_\_\_\_

Type of Service: \_\_\_\_\_

Docket No.: \_\_\_\_\_ Date: \_\_\_\_\_

Date Docketed: \_\_\_\_\_

**A. COMPANY AND TELECOMMUNICATION SERVICE INFORMATION**

(A-1) Please indicate the type of telecommunications services that you want to provide in Arizona and mark the appropriate box(s).

☒ Resold Long Distance Telecommunications Services (Answer Sections A, B).

☐ Resold Local Exchange Telecommunications Services (Answer Sections A, B, C).

☐ Facilities-Based Long Distance Telecommunications Services (Answer Sections A, B, D).

☒ Facilities-Based Local Exchange Telecommunications Services (Answer Sections A, B, C, D, E)

☐ Alternative Operator Services Telecommunications Services (Answer Sections A, B)

☐ Other \_\_\_\_\_ (Please attach complete description)

(A-2) The name, address, telephone number (including area code), facsimile number (including area code), e-mail address, and World Wide Web address (if one is available for consumer access) of the Applicant:

**Cbeyond Communications, LLC**  
320 Interstate North Parkway, Suite 300  
Atlanta, GA 30339  
Telephone: 1-866-424-2600  
Facsimile:  
E-Mail: [info@cbeyond.net](mailto:info@cbeyond.net)  
Web Address: [www.cbeyond.net](http://www.cbeyond.net)

(A-3) The d/b/a ("Doing Business As") name if the Applicant is doing business under a name different from that listed in Item (A-2):

None

(A-4) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Management Contact:

**Julia O. Strow**  
**Vice President – Regulatory and Industry Relations**  
**Cbeyond Communications, LLC**  
**320 Interstate North Parkway, Suite 300**  
**Atlanta, GA 30339**  
**Telephone: (678) 424-2400**  
**Facsimile: (678) 424-2509**  
**E-mail: Julia.Strow@cbeyond.com**

(A-5) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Attorney and/or Consultant:

**Michael Patten**  
**Roshka DeWulf & Patten, PLC**  
**One Arizona Center**  
**400 East Van Buren Street, Suite 800**  
**Phoenix, Arizona 85004**  
**Telephone: (602) 256-6100**  
**Facsimile: (602) 256-6800**  
**E-mail: mpatten@rdp-law.com**

(A-6) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Complaint Contact Person:

**Julia O. Strow**  
**Vice President – Regulatory and Industry Relations**  
**Cbeyond Communications, LLC**  
**320 Interstate North Parkway, Suite 300**  
**Atlanta, GA 30339**  
**Telephone: (678) 424-2400**  
**Facsimile: (678) 424-2509**  
**E-mail: Julia.Strow@cbeyond.com**

(A-7) What type of legal entity is the Applicant? Mark the appropriate box(s) and category.

☐

Sole proprietorship

☐

Partnership: \_\_\_\_\_ Limited, \_\_\_\_\_ General, \_\_\_\_\_ Arizona, \_\_\_\_\_ Foreign

XX Limited Liability Company: \_\_\_\_\_ Arizona, XX Foreign

☐

Corporation: \_\_\_\_\_ "S", \_\_\_\_\_ "C", \_\_\_\_\_ Non-profit

Other, specify: \_\_\_\_\_

(A-8) Please include "Attachment A":

Attachment "A" must include the following information:

1. A copy of the Applicant's Certificate of Good Standing as a domestic or foreign corporation, LLC, or other entity in Arizona.
2. A list of the names of all owners, partners, limited liability company managers (or if a member managed LLC, all members), or corporation officers and directors (specify).
3. Indicate percentages of ownership of each person listed in A-8.2.

**Applicant is a wholly-owned subsidiary of Cbeyond, Inc., a publicly traded corporation. The Certificate of Good Standing is attached at Attachment A. The Company's management team and officers is set forth in Attachment E.**

(A-9) Include your Tariff as "Attachment B".

Your Tariff must include the following information:

1. Proposed Rates and Charges for each service offered (reference by Tariff page number). See Pages 48 – 55.
2. Tariff Maximum Rate and Prices to be charged (reference by Tariff page number). See Pages 39 – 46.
3. Terms and Conditions Applicable to provision of Service (reference by Tariff page number). See Pages 11 – 22.
4. Deposits, Advances, and/or Prepayments Applicable to provision of Service (reference by Tariff page number). See Pages 22.
5. The proposed fee that will be charged for returned checks (reference by Tariff page number). See Pages 37 and 46.

(A-10) Indicate the geographic market to be served:

☒ Statewide. (Applicant adopts statewide map of Arizona provided with this application).

☐ Other. Describe and provide a detailed map depicting the area.

(A-11) Indicate if the Applicant or any of its officers, directors, partners, or managers has been or are currently involved in any formal or informal complaint proceedings pending before any state or federal regulatory commission, administrative agency, or law enforcement agency.

Describe in detail any such involvement. Please make sure you provide the following information:

1. States in which the Applicant has been or is involved in proceedings.
2. Detailed explanations of the Substance of the Complaints.
3. Commission Orders that resolved any and all Complaints.
4. Actions taken by the Applicant to remedy and/or prevent the Complaints from re-occurring.

Neither the Applicant, or any of its officers, directors or managers have been involved in any formal or informal complaints proceedings pending before any state regulatory commission, administrative agency or law enforcement agency.

The Company is subject to federal and state rules and regulations pertaining to customer proprietary network information, or CPNI. In connection with these rules and regulations, the FCC has initiated a series of investigations regarding the CPNI practices of numerous companies, including Cbeyond. The FCC's investigation of CPNI compliance began on February 2, 2006. On April 26, 2006, the FCC issued a Notice of Apparent Liability, or NAL, proposing a fine of \$100,000 on the Company for failure to maintain in its files a compliance certificate required by FCC rules. The FCC's investigation is not yet complete. The FCC may ultimately impose a fine that is larger than that proposed in the NAL and may seek to impose additional fines relating to CPNI compliance. The Company is currently unable to assess the magnitude and likelihood of such fines.

(A-12) Indicate if the Applicant or any of its officers, directors, partners, or managers has been or are currently involved in any civil or criminal investigation, or had judgments entered in any civil matter, judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten (10) years.

Describe in detail any such judgments or convictions. Please make sure you provide the following information:

1. States involved in the judgments and/or convictions.
2. Reasons for the investigation and/or judgment.
3. Copy of the Court order, if applicable.

None

(A-13) Indicate if the Applicant's customers will be able to access alternative toll service providers or resellers via 1+101XXXX access.

Yes

XX No

**Cbeyond only offers bundled local and long distance services to its Customers.**

(A-14) Is Applicant willing to post a Performance Bond? Please check appropriate box(s).

XX For Long Distance Resellers, a \$10,000 bond will be recommended for those resellers who collect advances, prepayments or deposits.

XX Yes

No

If "No", continue to question (A-15).

☐ For Local Exchange Resellers, a \$25,000 bond will be recommended.

☐ Yes

☐ No

If "No", continue to question (A-15).

XX For Facilities-Based Providers of Long Distance, a \$100,000 bond will be recommended.

XX Yes

No

If "No", continue to question (A-15).

☐ For Facilities-Based Providers of Local Exchange, a \$100,000 bond will be recommended.

☐ Yes

☐ No

If any box in (A-14) is marked "No", continue to question (A-15).

Note: Amounts are cumulative if the Applicant is applying for more than one type of service.

(A-15) If any box in (A-14) is marked "No", provide the following information. Clarify and explain the Applicant's deposit policy (reference by tariff page number). Provide a detailed explanation of why the Applicant's superior financial position limits any risk to Arizona consumers.

N/A

(A-16) Submit copies of affidavits of publication that the Applicant has, as required, published legal notice of the Application in all counties where the Applicant is requesting authority to provide service.

Note: For Resellers, the Applicant must complete and submit an Affidavit of Publication Form as Attachment "C" before Staff prepares and issues its report. Refer to the Commission's website for Legal Notice Material (Newspaper Information, Sample Legal Notice and Affidavit of Publication). For Facilities-Based Service Providers, the Hearing Division will advise the Applicant of the date of the hearing and the publication of legal notice. Do not publish legal notice or file affidavits of publication until you are advised to do so by the Hearing Division.

(A-17) Indicate if the Applicant is a switchless reseller of the type of telecommunications services that the Applicant will or intends to resell in Arizona:

Yes

XX No

If "Yes", provide the name of the company or companies whose telecommunications services the Applicant resells.

(A-18) List the States in which the Applicant has had an application approved or denied to offer telecommunications services similar to those that the Applicant will or intends to offer in Arizona:

Note: If the Applicant is currently approved to provide telecommunications services that the Applicant intends to provide in Arizona in less than six states, excluding Arizona, list the Public Utility Commission ("PUC") of each state that granted the authorization. For each PUC listed provide the name of the contact person, their phone number, mailing address including zip code, and e-mail address.

**Applicant holds certificates to provide local exchange and interexchange services in the following states: California, Colorado, District of Columbia, Florida, Georgia, Illinois, Massachusetts, Michigan, Minnesota, Missouri, New York, North Carolina, Pennsylvania, Texas, Virginia, and Washington.**

**Applicant has not been denied a certificate in any state.**

(A-19) List the States in which the Applicant currently offers telecommunications services similar to those that the Applicant will or intends to offer in Arizona.

Note: If the Applicant currently provides telecommunication services that the Applicant intends to provide in Arizona in six or more states, excluding Arizona, list the states. If the Applicant does not currently provide telecommunications services that the Applicant intends to provide in Arizona in five or less states, list the key personnel employed by the Applicant. Indicate each employee's name, title, position, description of their work experience, and years of service in the telecommunications services industry.

**Applicant is currently providing services in California, Colorado, Georgia, Illinois and Texas that are similar to those it intends to provide in Arizona. See Attachment E for information on the Company's Management Team and Officers.**

(A-20) List the names and addresses of any alternative providers of the service that are also affiliates of the telecommunications company, as defined in R14-2-801.

None

(A-21) Check here if you wish to adopt as your petition a statement that the service has already been classified as competitive by Commission Decision:

- ☐ XX Decision # 64178 Resold Long Distance  
☐ Decision # 64178 Resold LEC  
☐ XX Decision # 64178 Facilities Based Long Distance  
☐ Decision # 64178 Facilities Based LEC

## B. FINANCIAL INFORMATION

(B-1) Indicate if the Applicant has financial statements for the two (2) most recent years.

☐ XX Yes ☐ No

If "No," explain why and give the date on which the Applicant began operations.

(B-2) Include "Attachment D".

Provide the Applicant's financial information for the two (2) most recent years.

1. A copy of the Applicant's balance sheet.
2. A copy of the Applicant's income statement.
3. A copy of the Applicant's audit report.
4. A copy of the Applicant's retained earnings balance.
5. A copy of all related notes to the financial statements and information.

**There are no separate financials for the Company. Financial information for the Company's parent, CBeyond, Inc., is available through its SEC filings, including 10-K and 10-Q reports. Those voluminous filings are accessible through the internet.**

**Note:** Make sure "most recent years" includes current calendar year or current year reporting period.

**(B-3)** Indicate if the Applicant will rely on the financial resources of its Parent Company, if applicable.

**Applicant's parent company is Cbeyond, Inc., a publicly traded company. Applicant intends to rely on the financial resources of its parent company.**

**(B-4)** The Applicant must provide the following information.

1. Provide the projected total revenue expected to be generated by the provision of telecommunications services to Arizona customers for the first twelve months following certification, adjusted to reflect the maximum rates for which the Applicant requested approval. Adjusted revenues may be calculated as the number of units sold times the maximum charge per unit.
2. Provide the operating expenses expected to be incurred during the first twelve months of providing telecommunications services to Arizona customers following certification.
3. Provide the net book value (original cost less accumulated depreciation) of all Arizona jurisdictional assets expected to be used in the provision of telecommunications service to Arizona customers at the end of the first twelve months of operation. Assets are not limited to plant and equipment. Items such as office equipment and office supplies should be included in this list.
4. If the projected value of all assets is zero, please specifically state this in your response.
5. If the projected fair value of the assets is different than the projected net book value, also provide the corresponding projected fair value amounts.

**See Attachment F. There are no assets in Arizona.**

**C. RESOLD AND/OR FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES**

**(C-1)** Indicate if the Applicant has a resale agreement in operation,

☐

Yes

**XX** No

If "Yes", please reference the resale agreement by Commission Docket Number or Commission Decision Number.

**D. FACILITIES-BASED LONG DISTANCE AND/OR FACILITIES BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES**

(D-1) Indicate if the Applicant is currently selling facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services in Arizona. This item applies to an Applicant requesting a geographic expansion of their CC&N:

☐ Yes ☒ No

If "Yes," provide the following information:

1. The date or approximate date that the Applicant began selling facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services in Arizona.
2. Identify the types of facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services that the Applicant sells in Arizona.

If "No," indicate the date when the Applicant will begin to sell facilities-based long distance telecommunications AND/OR facilities-based local exchange telecommunications services in Arizona.

**Applicant anticipates commencement of service within 12 months of the issuance of the CCN, but the actual timing of entry will be determined at the time the CCN is issued. Applicant has entered into an ICA with Qwest in anticipation of the issuance of the CCN.**

**E. FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES**

(E-1) Indicate whether the Applicant will abide by the quality of service standards that were approved by the Commission in Commission Decision Number 59421:

☒ Yes ☐ No


(E-2) Indicate whether the Applicant will provide all customers with 911 and E911 service, where available, and will coordinate with incumbent local exchange carriers ("ILECs") and emergency service providers to provide this service:

☒ Yes ☐ No

(E-3) Indicate that the Applicant's switch is "fully equal access capable" (i.e., would provide equal access to facilities-based long distance companies) pursuant to A.A.C. R14-2-1111 (A):

☒ Yes ☐ No

I certify that if the applicant is an Arizona corporation, a current copy of the Articles of Incorporation is on file with the Arizona Corporation Commission and the applicant holds a Certificate of Good Standing from the Commission. If the company is a foreign corporation or partnership, I certify that the company has authority to transact business in Arizona. I certify that all appropriate city, county, and/or State agency approvals have been obtained. Upon signing of this application, I attest that I have read the Commission's rules and regulations relating to the regulations of telecommunications services (A.A.C. Title 14, Chapter 2, Article 11) and that the company will abide by Arizona state law including the Arizona Corporation Commission Rules. I agree that the Commission's rules apply in the event there is a conflict between those rules and the company's tariff, unless otherwise ordered by the Commission. I certify that to the best of my knowledge the information provided in this Application and Petition is true and correct.

  
\_\_\_\_\_  
(Signature of Authorized Representative)

12-18-06  
\_\_\_\_\_  
(Date)

Julia Strow  
\_\_\_\_\_  
(Print Name of Authorized Representative)

Vice President  
\_\_\_\_\_  
(Title)

SUBSCRIBED AND SWORN to before me this 18<sup>th</sup> day of December, 2006

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires January 11, 2009

# ATTACHMENT

"A"

# STATE OF ARIZONA



Office of the  
**CORPORATION COMMISSION**  
**CERTIFICATE OF GOOD STANDING**

*To all to whom these presents shall come, greeting:*

*I, Brian C. McNeil, Executive Director of the Arizona Corporation Commission, do hereby certify that*

**\*\*\*CBEYOND COMMUNICATIONS, LLC\*\*\***

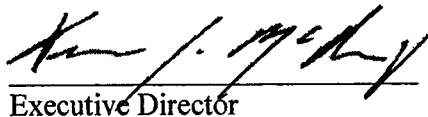
*a foreign limited liability company organized under the laws of the jurisdiction of Delaware did obtain a Certificate of Registration in Arizona on the 28th day of July 2000.*

*I further certify that according to the records of the Arizona Corporation Commission, as of the date set forth hereunder, the said limited liability company has not had its Certificate of Registration revoked for failure to comply with the provisions of A.R.S. section 29-601 et seq., the Arizona Limited Liability Company Act; and that the said limited liability company has not filed a Certificate of Cancellation as of the date of this certificate.*

*This certificate relates only to the legal authority of the above named entity as of the date issued. This certificate is not to be construed as an endorsement, recommendation, or notice of approval of the entity's condition or business activities and practices.*

**IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Arizona Corporation Commission. Done at Phoenix, the Capital, this 21st Day of December, 2006, A. D.**



  
Executive Director

Order Number: 111226

# ATTACHMENT

"B"

**Cbeyond Communications, LLC**

320 Interstate North Parkway  
Atlanta, Georgia 30339

**LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES TARIFF**

This tariff contains the description, regulations and rates for the furnishing of services and facilities for telecommunications services provided by Cbeyond Communications with principal offices at 320 Interstate North Parkway, Atlanta, Georgia 30339. This tariff applies for service furnished within the State of Arizona. This tariff is on file with the Arizona Corporation Commission, and copies may be inspected, during normal business hours, at the Company's principal place of business in Atlanta, Georgia.

---

Issued:

Effective:

By: Julia Strow  
Vice President, Regulatory and Industry Relations  
320 Interstate North Parkway  
Atlanta, Georgia 30339

CHECK SHEET

Pages of this tariff, as indicated below, are effective as of the date shown at the bottom of the respective pages. Original and revised pages, as named below, comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this page.

PAGE	REVISION		PAGE	REVISION		PAGE	REVISION	
Title	Original	*	26	Original	*	51	Original	*
1	Original	*	27	Original	*	52	Original	*
2	Original	*	28	Original	*	53	Original	*
3	Original	*	29	Original	*	54	Original	*
4	Original	*	30	Original	*	55	Original	*
5	Original	*	31	Original	*			
6	Original	*	32	Original	*			
7	Original	*	33	Original	*			
8	Original	*	34	Original	*			
9	Original	*	35	Original	*			
10	Original	*	36	Original	*			
11	Original	*	37	Original	*			
12	Original	*	38	Original	*			
13	Original	*	39	Original	*			
14	Original	*	40	Original	*			
15	Original	*	41	Original	*			
16	Original	*	42	Original	*			
17	Original	*	43	Original	*			
18	Original	*	44	Original	*			
19	Original	*	45	Original	*			
20	Original	*	46	Original	*			
21	Original	*	47	Original	*			
22	Original	*	48	Original	*			
23	Original	*	49	Original	*			
24	Original	*	50	Original	*			
25	Original	*						

\* - indicates those pages included with this filing

Issued:

Effective:

By: Julia Strow  
Vice President, Regulatory and Industry Relations  
320 Interstate North Parkway  
Atlanta, Georgia 30339

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Atlanta, Georgia 30339

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By: Julia Strow  
Vice President, Regulatory and Industry Relations  
320 Interstate North Parkway  
Atlanta, Georgia 30339

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**SYMBOLS**

The following are the only symbols used for the purposes indicated below:

- (D) Delete or Discontinue
- (I) Change Resulting in an Increase to a Customer's Bill
- (M) Moved from Another Tariff Location
- (N) New
- (R) Change Resulting in a Reduction to a Customer's Bill
- (T) Change in Text or Regulation but no Change in Rate or Charge

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Issued:

Effective:

By: Julia Strow  
Vice President, Regulatory and Industry Relations  
320 Interstate North Parkway  
Atlanta, Georgia 30339

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**TARIFF FORMAT**

- A. **Sheet Numbering** - Page numbers appear in the upper right corner of the sheet. Pages are numbered sequentially. However, new pages are occasionally added to the tariff. When a new page is added between existing pages with whole numbers, a decimal is added. For example, a new page added between pages 34 and 35 would be page 34.1.
- B. **Sheet Revision Numbering** - Revision numbers also appear in the upper right corner of the page. These numbers are used to determine the most current page version on file with the Commission. For example, 4th Revised Page 34 cancels the 3rd Revised Page 34. Consult the check sheet for the page currently in effect.
- C. **Paragraph Numbering Sequence** - There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:
- 2
  - 2.1
  - 2.1.1
  - 2.1.1.A
  - 2.1.1.A.1
  - 2.1.1.A.1.(a)
  - 2.1.1.A.1.(a).I
  - 2.1.1.A.1.(a).I.(i)
  - 2.1.1.A.1.(a).I.(i).(1)
- D. **Check Sheet** - When a tariff is filed with the Commission, an updated check sheet accompanies the tariff filing. The check sheet lists the tariff pages, with a cross reference to the current revision number. When new sheets are added, the check sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (\*). There will be no other symbols used on this sheet if these are the only changes made. The tariff user should refer to the latest check sheet to find out if a particular page is the most current on file with the Commission.

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Issued:

Effective:

By: Julia Strow  
Vice President, Regulatory and Industry Relations  
320 Interstate North Parkway  
Atlanta, Georgia 30339

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**APPLICATION OF TARIFF**

This tariff sets forth the service offerings, rates and terms and conditions of service applicable to the furnishing of End-User local exchange telecommunications services by Cbeyond Communications, LLC ("Cbeyond" or "Company") to business Customers within the State of Arizona.

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Issued:

Effective:

By: Julia Strow  
Vice President, Regulatory and Industry Relations  
320 Interstate North Parkway  
Atlanta, Georgia 30339

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS**

**1.1 Definitions**

**Busy Hour** - The two consecutive half hours during which the greatest volume of traffic is handled.

**Call** - A completed connection between the Calling and Called parties.

**Calling Station** - The telephone number from which a Call originates.

**Called Station** - The telephone number called.

**Carrier** - An entity other than the Company that provides telecommunications services.

**Commission** - The Arizona Corporation Commission.

**Company** - Cbeyond Communications, LLC, unless specifically stated otherwise.

**Customer** - A person, firm, corporation, partnership or other entity, including affiliates or divisions of the Customer, in whose name the telephone number of the Calling Station is registered with the underlying local exchange company. The Customer is responsible for payment of charges to the Company and compliance with all terms and conditions of this tariff.

**Day** - The period of time from 8:00 a.m. to (but not including) 5:00 p.m., Monday through Friday, as measured by local time at the location from which the Call is originated.

**Disconnect** - To render inoperable or to disable circuitry thus preventing outgoing and incoming toll communications service.

**Evening** - The period of time from 5:00 p.m. to (but not including) 11:00 p.m., Sunday through Friday and any time during a Holiday, as measured by local time at the location from which the Call is originated.

**Incomplete** - Any Call where voice transmission between the Calling and Called station is not established.

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Issued:

By: Julia Strow  
Vice President, Regulatory and Industry Relations  
320 Interstate North Parkway  
Atlanta, Georgia 30339

Effective:

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (Cont'd.)**

**1.1 Definitions (Cont'd.)**

**Holiday** - For the purposes of this tariff recognized holidays are New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

**Message** - A completed telephone call by a Customer or User.

**Normal Business Hours** - The hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays.

**Premises** - The space occupied by an individual Customer in a building, in adjoining buildings occupied entirely by that Customer, or on contiguous property occupied by the Customer separated only by a public thoroughfare, a railroad right of way, or a natural barrier.

**Rate** - Money, charge, fee or other recurring assessment billed to Customers for services or equipment.

**State** - Arizona

**Terminal Equipment** - Telephone instruments, including pay telephone equipment, the common equipment of large and small key and PBX systems and other devices and apparatus, and associated wiring, which are intended to be connected electrically, acoustically, or inductively to the telecommunication system.

**User or End User** - Customer or any authorized person or entity that utilizes the Company's services.

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (Cont'd.)**

**1.2 Abbreviations**

**BLV** - Busy Line Verification

**CPE** - Customer Premises Equipment

**DID** - Direct Inward Dialing

**DOD** - Direct Outward Dialing

**PBX** - Private Branch Exchange

**PIC** - Primary or Preferred Interexchange Carrier

**POP** - Point of Presence

**V&H** - Vertical and Horizontal Coordinates

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**SECTION 2 - RULES AND REGULATIONS**

**2.1 Undertaking of the Company**

- 2.1.1 The Company provides facilities-based local exchange telecommunications service to business Customers for the direct transmission of voice, data and other types of telecommunications.
- 2.1.2 The Company installs, operates and maintains the communications services provided herein in accordance with the terms and conditions set forth in this tariff. When authorized by the Customer, the Company may act as the Customer's agent for ordering access connection facilities provided by other carriers or entities to allow connection of a Customer's location to the Company's network. The Customer shall be responsible for all charges due for such service arrangements.
- 2.1.3 The Company's services are provided on a monthly basis, unless otherwise stated in this tariff. Services are available twenty-four (24) hours per day, seven (7) days per week.

**2.2 Limitations of Service**

- 2.2.1 Service is offered subject to the availability of facilities and provisions of this tariff.
- 2.2.2 Service is furnished to the User for any lawful purpose. Service shall not be used for any unlawful purpose, nor used in such a manner as to interfere unreasonably with the use of service by any other Users.
- 2.2.3 The use of the Company's services without payment for service or attempting to avoid payment for service by fraudulent means or devices, false or invalid numbers, or false calling or credit cards is prohibited.
- 2.2.4 The Company's services may be denied for nonpayment of charges or for other violations of the terms and conditions set forth in this tariff.
- 2.2.5 The use of the Company's services to make Calls which might reasonably be expected to frighten, abuse, torment, or harass another is prohibited.

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**SECTION 2 - RULES AND REGULATIONS (Cont'd.)**

**2.2 Limitations of Service (Cont'd.)**

- 2.2.6 Service temporarily may be refused or limited because of system capacity limitations.
- 2.2.7 Service is subject to transmission limitations caused by natural (including atmospheric, geographic or topographic) or artificial conditions adversely affecting transmission.
- 2.2.8 Service to any or all Customers may be temporarily interrupted or curtailed due to equipment modifications, upgrades, relocations, repairs and similar activities necessary for proper or improved operations.
- 2.2.9 The Company reserves the right to discontinue furnishing service where the Customer is using the service in violation of the law or the provisions of this tariff.

**2.3 Limitations of Liability**

- 2.3.1 Because the Company has no control of communications content transmitted over its system, and because of the possibility of errors incident to the provision and use of its service, service furnished by the Company is subject to the terms, conditions and limitations herein specified.
- 2.3.2 The Company is not liable to Users for interruptions in service except as set forth in Section 2.5 of this tariff.
- 2.3.3 The liability of the Company for errors in billing that result in overpayment by the Customer shall be limited, unless otherwise ordered by the Commission, to a credit equal to the dollar amount erroneously billed or, in the event that payment has been made and service has been discontinued, to a refund of the amount erroneously billed.

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**SECTION 2 - RULES AND REGULATIONS (Cont'd.)**

**2.3 Limitations of Liability (Cont'd.)**

2.3.4 The Company shall not be liable for and the User shall indemnify and hold the Company harmless against any claims for loss or damages involving:

2.3.4.A Any act or omission of: (i) the User; or (ii) any other entity furnishing service, equipment or facilities for use in conjunction with services or facilities provided by the Company;

2.3.4.B Interruptions or delays in transmission, or errors or defects in transmission, or failure to transmit when caused by or as a result of acts of God, fire, flood or other catastrophes, war, riots, national emergencies, government or military authorities, strikes, lock-outs, work stoppages or other labor difficulties, or causes beyond the Company's control;

2.3.4.C Any unlawful or unauthorized use of the Company's facilities and services;

2.3.4.D Libel, slander or infringement of copyright arising directly or indirectly from content transmitted over facilities provided by the Company;

2.3.4.E Infringement of patents arising from combining apparatus and systems of the User with facilities provided by the Company;

2.3.4.F Claims arising out of any act or omission of the User in connection with service provided by the Company;

2.3.4.G Breach in the privacy or security of communications transmitted over the Company's facilities;

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**SECTION 2 - RULES AND REGULATIONS (Cont'd.)**

**2.3 Limitations of Liability (Cont'd.)**

**2.3.4 (Cont'd.)**

- 2.3.4.H Changes in any of the facilities, operations or procedures of the Company that:  
(1) render any equipment, facilities or services provided or utilized by the User  
obsolete; (2) require modification or alteration of such equipment, facilities or  
services; or (3) otherwise affect use or performance of such equipment, facilities  
or services except where reasonable notice is required by the Company and is  
not provided to the Customer;
- 2.3.4.I Defacement of or damage to the Customer's Premises or personal property  
resulting from the furnishing of services or equipment on such Premises or the  
installation or removal thereof, unless such defacement is caused by negligence  
or the willful misconduct of the Company's agents or employees;
- 2.3.4.J Any wrongful act of a Company employee where such act is not authorized by  
the Company and is not within the scope of the employee's responsibilities for  
the Company;
- 2.3.4.K Any noncompleted calls due to network busy conditions; and
- 2.3.4.L Any calls not actually attempted to be completed during any period that service  
is unavailable.
- 2.3.5 The User shall reimburse the Company for all costs, expenses and fees (including  
reasonable attorneys' fees and costs) incurred by the Company in its defense against claims  
set forth in Section 2.3.4.
- 2.3.6 The Company assumes no responsibility for the availability or performance of any facilities  
under the control of other entities that are used to provide service to the User, even if the  
Company has acted as the User's agent in arranging for such facilities or services.

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**SECTION 2 - RULES AND REGULATIONS (Cont'd.)**

**2.3 Limitations of Liability (Cont'd.)**

- 2.3.7 Any claim against the Company shall be deemed waived unless presented in writing to the Company within thirty (30) days after the date of the occurrence that gave rise to the claim.
- 2.3.8 With respect to the services provided pursuant to this tariff, the Company makes no representations or warranties, express or implied, either in fact or by operation of law, statutory or otherwise, including, but not limited to, warranties of title or implied warranties of merchantability or fitness for a particular purpose, except those expressly set forth in this tariff. The Company does not authorize anyone to make a warranty or representation of any kind on its behalf and the User should not rely on any such statement.
- 2.3.9 Any liability of the Company for loss or damages arising out of mistakes, omissions, interruptions, delays, errors or defects in the service, the transmission of the service, or failures or defects in facilities furnished by the Company, occurring in the course of furnishing service shall in no event exceed an amount equivalent to the proportionate fixed monthly charge to the Customer for service, during the period of time in which such mistakes, omissions, interruptions, delays, errors or defects in the service, its transmission or failure or defect in facilities furnished by the Company occurred.

**2.4 Responsibilities of the Customer**

- 2.4.1 The Customer is responsible for placing any necessary orders, complying with tariff regulations and assuring that Users comply with tariff regulations. The Customer shall ensure compliance with any applicable laws, regulations, orders or other requirements of any governmental entity relating to services provided by the Company to the Customer or made available by the Customer to another User. The Customer also is responsible for the payment of charges for all Calls originated at the Customer's numbers which are not collect, third party, calling card, or credit card Calls.

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**SECTION 2 - RULES AND REGULATIONS (Cont'd.)**

**2.4 Responsibilities of the Customer (Cont'd.)**

- 2.4.2 The Customer is responsible for charges incurred for special construction and/or special facilities which the Customer requests and which are ordered by the Company on the Customer's behalf.
- 2.4.3 If required for the provisioning of the Company's services, the Customer must provide the Company, free of charge, with any necessary equipment space, supporting structure, conduit and electrical power.
- 2.4.4 The Customer is responsible for arranging access to its Premises at times mutually agreeable to the Company and the Customer when required for Company personnel to install, repair, maintain, program, inspect or remove equipment associated with the provision of the Company's services.
- 2.4.5 The Customer must pay the Company for replacement or repair of damage to the Company's equipment or facilities caused by negligent or improper use on the part of the Customer, Users, or others.
- 2.4.6 The Customer must indemnify the Company for the theft of any Company equipment or facilities installed at the Customer's Premises.
- 2.4.7 The Customer agrees, except where the events, incidents or eventualities set forth in this sentence are the result of the Company's gross negligence or willful misconduct, to release, indemnify and hold harmless the Company against any and all loss, claims, demands, suits or other action or any liability whatsoever, whether suffered, made, instituted or asserted by the Customer or by any other party or person, for any personal injury to or death of any person or persons, or for any loss of or damage to any property, whether owned by the Customer or others. The Customer shall reimburse the Company for all costs, expenses and fees (including reasonable attorneys' fees and costs) incurred by the Company in its defense against such actions.

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**SECTION 2 - RULES AND REGULATIONS (Cont'd.)**

**2.5 Allowances for Interruptions in Service**

**2.5.1 General**

- 2.5.1.A A service is interrupted when it becomes unusable to the User, *e.g.*, the User is unable to transmit or receive communications due to the failure of a component furnished by the Company under this tariff.
- 2.5.1.B An interruption period begins when the User reports a service, facility or circuit to be inoperative and releases it for testing and repair. An interruption period ends when the service, facility or circuit is operative.
- 2.5.1.C If the User reports a service, facility or circuit to be inoperative but declines to release it for testing and repair, the service, facility or circuit is considered to be impaired but not interrupted. No credit allowances will be made for a service facility or circuit considered by the Company to be impaired.

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**SECTION 2 - RULES AND REGULATIONS (Cont'd.)**

**2.5 Allowances for Interruptions in Service (Cont'd.)**

**2.5.2 Application of Credits for Interrupted Services**

- 2.5.2.A At the Customer's request, a credit allowance for a continuous interruption of service for more than twenty-four (24) hours will be made in an amount to be determined by the Company on a case-by-case basis.
- 2.5.2.B Any such interruption will be measured from the time it is reported to or detected by the Company, whichever occurs first.
- 2.5.2.C In the event the User is affected by such interruption for a period of less than twenty-four (24) hours, no adjustment will be made. No adjustments will be earned by accumulating non-continuous periods of interruption.
- 2.5.2.D When an interruption exceeds twenty-four (24) hours, the length of the interruption will be measured in twenty-four (24) hour days. A fraction of a day consisting of less than twelve (12) hours will not be credited and a period of twelve (12) hours or more will be considered an additional day.

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**SECTION 2 - RULES AND REGULATIONS (Cont'd.)**

**2.5 Allowances for Interruptions in Service (Cont'd.)**

**2.5.3 Limitations on Allowances**

2.5.3.A No credit allowance will be made for any interruption of service:

- 2.5.3.A.1 due to the negligence of, or noncompliance with the provisions of this tariff by, any person or entity other than the Company, including but not limited to the Customer or other entities or carriers connected to the service of the Company;
- 2.5.3.A.2 due to the failure of power, equipment, systems or services not provided by the Company;
- 2.5.3.A.3 due to circumstances or causes beyond the control of the Company;
- 2.5.3.A.4 during any period in which the Company is not given full and free access to the Customer's or Company's facilities and equipment for the purpose of investigating and correcting the interruption;
- 2.5.3.A.5 during any period in which the User continues to use the service on an impaired basis;
- 2.5.3.A.6 during any period in which the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- 2.5.3.A.7 that occurs or continues due to the Customer's failure to authorize replacement of any element of special construction; and
- 2.5.3.A.8 that was not reported to the Company within thirty (30) days of the date that service was affected.

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**SECTION 2 - RULES AND REGULATIONS (Cont'd.)**

**2.6 Termination of Service**

- 2.6.1 A Customer may terminate service, with or without cause, by giving the Company notice in writing. The Company may terminate service for non-payment of any invoice that is thirty (30) days past due after giving the Customer five (5) business days prior written notice. The Company may terminate service without notice in the event of the Customer maintaining and/or operating its own equipment in a manner that may cause imminent harm to the Company's equipment. If the Customer has signed a Term Agreement, early termination charges may apply. See Section 2.9.1.
- 2.6.2 The Customer is responsible for all charges incurred to the Calling Station regardless of which party terminates the service. The Customer shall reimburse the Company for all costs, expenses and fees (including reasonable attorneys' fees and costs) incurred by the Company in collecting such charges.

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**SECTION 2 - RULES AND REGULATIONS (Cont'd.)**

**2.7 Payment of Charges**

- 2.7.1 The Customer is responsible for payment of all charges for service furnished to the User.
- 2.7.2 The Company reserves the right to assess late payment charges for Customers whose account(s) carries principal owing from the prior billing period. Any charges not paid in full by the due date indicated on the billing statement may be subject to a late fee of 1.5% per month.
- 2.7.3 Recurring monthly charges may be invoiced one month in advance. Invoicing cycles are approximately 30 days in length.
- 2.7.4 Customers must notify the Company either verbally or in writing of any disputed charges within thirty (30) days of the billing date, otherwise all charges on the invoice will be deemed accepted. All charges remain due and payable at the due date, although a Customer is not required to pay disputed charges while the Company conducts its investigation into the matter.

**2.8 Contracts**

- 2.8.1 Contracts will be used in special circumstances for Individual Case Basis ("ICB") service offerings. The terms and conditions for each contract offering are subject to the agreement of both the Customer and Cbeyond. Any specific contract will be made available to similarly situated Customers in substantially similar circumstances. Contracts are available to any similarly situated Customer that places an order within 30 days of their effective date. With respect to ICB offerings, Cbeyond will provide a notice or make it available to the Commission upon its request.

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**SECTION 2 - RULES AND REGULATIONS (Cont'd.)**

**2.9     Term Agreements**

2.9.1   Cbeyond offers Term Agreements wherein the Customer agrees to retain Cbeyond services for a mutually agreed upon length of time. If a customer terminates service prior to the end of the term agreement, a termination charge will apply. This termination charge is equal to the monthly recurring charges times the number of months remaining in the then current term plus all non-recurring charges for which Cbeyond has not been reimbursed.

**2.10    Deposits**

The Company may at times require deposits from Customers, and will comply with Ariz. Admin. Code R14-2-503 for the amount of the deposit and guidelines for requiring a deposit. The Company will pay interest at the rate of 3% per year, simple interest.

**2.11    Advance Payments**

The Company will not require advance payments from Customers.

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**SECTION 2 - RULES AND REGULATIONS (Cont'd.)**

**2.12 Contested Charges**

All bills are presumed accurate, and shall be binding on the Customer unless objection is received by the Company no more than thirty (30) days after such bills are rendered. In the event that a billing dispute between the Customer and the Company for service furnished to the Customer cannot be settled with mutual satisfaction, the Customer may take the following course of action:

2.12.1 First, the Customer may request, and the Company will provide, an in-depth review of the disputed amount. (The undisputed portion and subsequent bills must be paid on a timely basis or the service may be subject to disconnection.)

2.12.2 Second, if there is still a disagreement about the disputed amount after investigation and review by the Company, the Customer may file an appropriate complaint with the Arizona Corporation Commission. The address of the Commission is:

Arizona Corporation Commission  
Utilities Division  
1200 West Washington  
Phoenix, AZ 85007-2996

**2.13 Taxes**

State and local sales, use and similar taxes are billed as separate items and are not included in the quoted rates for service.

**2.14 Arizona Universal Service Fund (AUSF)**

In addition to all other taxes and fees that are listed herein or passed through in the normal course of business (e.g. sales tax), the Company shall also add an amount to be collected to each bill for recovery of the Arizona Universal Service Fund (AUSF).

Towards the ultimate goal that basic service be available and affordable to all citizens of the state, the Arizona Corporation Commission has created support mechanisms to assist in the provision of such service in high-cost areas. Pursuant to Arizona Administrative Code, R14-2, Article 12, the Rule directs that the surcharge will be levied on all telecommunications service purchased by end-users.

The Arizona Universal Service Fund (AUSF) surcharge will be the amount set forth in the Arizona Administrative Code, R14-2, Article 12. The percentage and amounts set forth will be subject to periodic adjustment by the Company.

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**SECTION 3 - DESCRIPTION OF SERVICE**

**3.1 Timing of Calls**

- 3.1.1 The Customer's monthly usage charges for the Company service are based upon the total number of minutes the Customer uses and the service options to which the Customer subscribes. Chargeable time begins at the time the called party answers (*i.e.* when two-way communications is possible), and ends when either party hangs up.
- 3.1.2 No charges apply if a Call is not completed.
- 3.1.3 For billing purposes, all Calls are rounded up to the nearest minute and billed in increments of one minute. The minimum Call duration is 1 minute for a connected Call.
- 3.1.4 Where applicable, charges will be rounded up to the nearest penny.
- 3.1.5 Usage begins when the called party picks up the receiver (*i.e.* when two-way communication is possible). The Company utilizes software answer supervision, which permits up to 60 seconds of ringing before the Call becomes billed usage. A Call is terminated when the calling or called party hangs up.
- 3.1.6 The Company will not knowingly charge for Incomplete Calls. Upon the Customer's request and proper verification, the Company shall promptly adjust or credit the Customer's account for charges or payments for any unanswered Call inadvertently billed due to the unavailability of Feature Group D or due to another carrier's failure to provide answer supervision. Where answer supervision is not available, any Call for which the duration exceeds one (1) minute shall be presumed to have been answered.

**3.2 Start of Billing**

Billing will begin upon the earlier of (i) connection of the facility to the customer network and commencement of services (service activation) or (ii) within 15 days after delivery of the applicable facility to the customer premises by the facility provider, unless the delay in connection of the facility is due to the fault of or requested by Cbeyond. The end of service date is the last day of the minimum notification of cancellation or any portion of the last day, after receipt by the Company of notification of cancellation as described in Section 2.6.1 of this tariff.

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**SECTION 3 - DESCRIPTION OF SERVICE (Cont'd.)**

**3.3 Calculation of Distance**

3.3.1 Where applicable, usage charges for all mileage sensitive products are based on the airline distance between rate centers associated with the originating and terminating points of the Call.

3.3.2 Where applicable, the airline mileage between rate centers is determined by applying the formula below to the vertical and horizontal coordinates associated with the rate centers involved.

**3.4 Minimum Call Completion Rate**

The Customer can expect a call completion rate of at least 97% per 100 Calls attempted during peak use periods for all Feature Group D (1+) services.

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**SECTION 3 - DESCRIPTION OF SERVICE (Cont'd.)**

**3.5 Local Exchange Service Offerings**

Where technically and economically feasible, the Company offers local exchange telecommunications services to business Customers pursuant to contractual arrangements. The Customer's total monthly use of the Company's service is charged at the applicable rates, in addition to any monthly service charges.

**3.5.1 Business Local Exchange Service**

Business Local Exchange Service provides the Customer with basic business access lines allowing connectivity to the local service network and features.

**3.5.2 Business Trunk Line Service**

Business Trunk Line Service provides trunk-featured business local services for connection to Key and PBX systems. Service will include Direct Outward Dial ("DOD").

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**SECTION 3 - DESCRIPTION OF SERVICE (Cont'd.)**

**3.5 Local Exchange Service Offerings (Cont'd.)**

**3.5.3 Trunk Line Call Hunting Service**

Trunk Line Call Hunting Service is a Local Business Line Service that may be sold with hunting features to front-end an existing Key or PBX System.

**3.5.4 Direct Inward Dial ("DID") Service**

DID enables a Caller to complete a Call to a specific extension without being transferred by an attendant. The Company offers DID service to its Customers in minimum blocks of ten (10) telephone numbers.

The Company reserves the right to review vacant DID Stations or Stations not in use to determine efficient telephone number utilization. Should the Company determine, based on its own discretion, that inefficient number utilization is occurring, the Company reserves the right to reassign the unused DID Stations.

The Customer has no property rights to the telephone number or any other call number destination associated with DID service furnished by the Company, and no right to the continuance of service through any particular end-office.

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**SECTION 3 - DESCRIPTION OF SERVICE (Cont'd.)**

**3.6 Additional Local Exchange Service Offerings**

**3.6.1 Directory Assistance Service**

Directory Assistance Service provides the Customer with the ability to use a directory assistance operator to provide listing information. The Company will provide access to Directory Assistance Service through arrangements with other telecommunications companies. A maximum of two (2) telephone numbers per Customer may be requested per Call.

**3.6.2 Directory Assistance Call Completion ("DACC") Service**

DACC service provides the Customer with the ability to use the directory assistance operator to connect the Customer with the party whose listing information the directory assistance operator has provided to the Customer. The DACC charge is in addition to the per Call charges for Directory Assistance set forth above.

**3.6.3 Operator Services**

Operator Services involve live or automated operator assistance with the placement of Customers' telephone Calls and related information. The Company will provide access to Operator Services through arrangements with other telecommunications companies.

**3.6.4 Directory Listings**

The Company shall provide for a single Directory Listing, termed the primary listing, in the telephone directory published by the dominant exchange service provider in the Customer's exchange area of the Station number that is designated as the Customer's main billing number. Additional information or additional or alternate Company Station numbers, other than the Customer's main billing number associated with a Customer's service, also will be provided to the Customer for a monthly recurring charge per listing.

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**SECTION 3 - DESCRIPTION OF SERVICE (Cont'd.)**

**3.6 Additional Local Exchange Service Offerings (Cont'd.)**

**3.6.5 Caller ID Number**

Displays the telephone number of an incoming Call on a CPE device attached to the Customer's telephone line.

**3.6.6 Caller ID with Name and Number**

Displays the name and telephone number of an incoming Call on a CPE device attached to the Customer's telephone line.

**3.6.7 Call Forwarding**

**3.6.7.A Call Forwarding - Universal**

This service allows the Customer to forward Calls to any telephone number or station in the Customer Group that their station is allowed to call, including voicemail and the attendant. Call Forwarding - Universal takes precedence over Call Forward - No Answer, and calls are forwarded immediately.

**3.6.7.B Call Forwarding - No Answer**

Calls are automatically forwarded to a number or station in the Customer Group after a specified number of rings.

**3.6.7.C Call Forwarding - Busy**

Calls are automatically forwarded to a number or station in the Customer Group when the user's line is busy.

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**SECTION 3 - DESCRIPTION OF SERVICE (Cont'd.)**

**3.6 Additional Local Exchange Service Offerings (Cont'd.)**

**3.6.8 Call Waiting**

When a line is in use, Call Waiting will generate an audible tone that will allow the user to know that another Call is coming in. The user may answer the new Call, and alternate between Calls, by pressing the hook flash switch on the telephone.

**3.6.9 Cancel Call Waiting**

Allows the user, on a per-Call basis, to cancel the Call Waiting function by dialing 70 before making a Call.

**3.6.10 Call Transfer**

Allows a user to transfer a Call to another station within the Customer Group or to an outside telephone number.

**3.6.11 Three-Way Calling**

Permits a user to place an existing Call on hold, dial another station in the Customer Group or outside telephone number, and bridge the new Call to the existing connection.

**3.6.12 Last Number Redial**

Allows a user to transfer a Call to another station within the Customer Group or to an outside telephone number.

**3.6.13 Speed Calling**

Enables a Customer to place calls to other telephone numbers by dialing a pre-programmed one or two-digit code rather than the complete telephone number. Speed Calling provides a 30-code capacity.

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**SECTION 3 - DESCRIPTION OF SERVICE (Cont'd.)**

**3.6 Additional Local Exchange Service Offerings (Cont'd.)**

**3.6.14 Call Park**

Allows a Call to be placed on hold by one station and retrieved by another station in the Customer Group.

**3.6.15 Distinctive Ring**

Assigns different ring tones for Calls from within the Customer Group and for those from outside.

**3.6.16 Calling ID Delivery Block**

Allows a station to block the display of their number and name on outgoing Calls on a per-Call basis for a fee.

**3.6.17 Anonymous Call Rejection**

Allows a called party to block calls from parties that have marked their calls "private".

**3.6.18 Automatic Busy Redial**

Permits the Customer to redial automatically the last number dialed. If the called line is busy, a 30-minute queuing process begins. The customer is then given an indication that the network will attempt to set up the call when the called line is idle.

**3.6.19 Automatic Call Return**

Enables a Customer to automatically return the last incoming Call. To return the Call, the Customer dials a feature code and the number is dialed automatically. If the called line is busy, a 30-minute queuing process begins. The Customer is then given an indication that the network will attempt to set up the Call when the called line is idle.

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**SECTION 3 - DESCRIPTION OF SERVICE (Cont'd.)**

**3.6 Additional Local Exchange Service Offerings (Cont'd.)**

**3.6.20 Call Blocking/Toll Restriction**

**3.6.20.A 900/976 Blocking**

900/976 blocking permits a new or existing Customer, on a per-line basis, to block all Calls made from its Calling Station to a 900 or 976-type telephone number. This Call Blocking option prevents Calls to 900/976 information service providers by blocking the following dialing sequences: 1+900 and 1+976.

**3.6.20.B Long Distance Blocking**

This Call Blocking option prevents 1+ long distance calls by station by blocking the following dialing sequences on a per-line basis: 1 + (NPA) + NXX + XXXX and 1 + NXX + XXXX.

**3.6.20.C Directory Services Blocking**

This Call Blocking option prevents Calls to local Directory Services and casual dialed long distance providers by blocking the following dialing sequences on a per-line basis: 1+555-1212, 1+NPA+555-1212, and 411.

**3.6.20.D Operator Services Blocking**

This Call Blocking option prevents Calls to local Operator Services by blocking the following dialing sequences on a per-line basis: 0+ and 0-.

**3.6.20.E International Blocking**

This Call Blocking option blocks access to international calling services on a per-line basis.

**3.6.20.F 3rd Party and Collect Call Blocking**

This Call Blocking option blocks access to inbound 3rd Party and Collect calls on a per-line basis.

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**SECTION 3 - DESCRIPTION OF SERVICE (Cont'd.)**

**3.6 Additional Local Exchange Service Offerings (Cont'd.)**

**3.6.21 Local Number Portability**

Local Number Portability is a service that enables the End User to retain use of the existing local exchange carriers number after choosing the Company as its local exchange carrier, provided that the Customer's location remains the same after the switch.

**3.6.22 N11 Services**

N11 Services provides Customers with the ability to receive special services through Cbeyond by dialing a three-digit number.

**A. Directory Services (411)**

Directory Services allows a customer to obtain the listed telephone number for a given name and address by dialing 411. Rates for this service are specified in Section 4.2 of this tariff.

**B. Repair Service (611)**

Repair Services allows Customers to report troubles to Cbeyond customer service by dialing 611. There is no charge for this service.

**C. Telecommunications Relay Services (711)**

Arizona Telecommunications Relay Service ("TRS") enables deaf, hard-of-hearing or speech-impaired persons who use a Text Telephone ("TT") or similar device to communicate freely with the hearing population not using TTs and visa versa. The Company will provide access to TRS through arrangements with other telecommunications carriers to enable Customers to access the TRS state provider to complete TRS Calls. Hearing callers who wish to reach people who are deaf, hard of hearing or speech disabled may dial 1-800-255-0135 and text telephone users may dial 1-800-255-0056. Arizona TRS users may dial 711 from inside Arizona to place relay calls. There is no charge for placing 711 calls.

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**SECTION 3 - DESCRIPTION OF SERVICE** (Cont'd.)

**3.6 Additional Local Exchange Service Offerings** (Cont'd.)

**3.6.22 N11 Services** (Cont'd.)

**C. Telecommunications Relay Services (711)** (Cont'd.)

Access to 711 is not available to the following classes of service:

1. Hotel/Motel/Hospital Service (toll call only)
2. 1+
3. 0+, 0-, (Credit Card, Third-Party Billing, Collect Calls)
4. Inmate Service
5. 101XXXX
6. Cellular - Type 2A

In addition, operator assisted calls to the 711 will not be completed.

The TRS entity is responsible for, and shall indemnify, protect, defend and save harmless the Company against all suits, actions, claims, demands and judgments, and of all costs, expenses and counsel fees incurred on account thereof, arising out of and resulting directly or indirectly from the service or in connection therewith, including, but not limited to, any loss, damage, expense or liability resulting from any infringement or claim of infringement, of any patent, trademark, copyright, or resulting from any claims of liable and slander.

The TRS entity shall respond promptly to any and all complaints lodged with any regulatory authority against any service provided via 711. If requested by the Company, the TRS entity shall assist the Company in responding to complaints made to the Company concerning the 711 dialing code.

In no event shall the Company be liable for any losses or damages of any kind resulting from the unavailability of its equipment or facilities or for any act, omission or failure of performance by the Company, or its employees, or agents, in connection with this Tariff. The Company shall not be responsible for calls that cannot be completed as a result of repair or maintenance difficulties on Company facilities and equipment nor on equipment owned or leased by the TRS entity.

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**SECTION 3 - DESCRIPTION OF SERVICE (Cont'd.)****3.6 Additional Local Exchange Service Offerings (Cont'd.)****3.6.22 N11 Services (Cont'd.)****D. 911 and E911 Services**

Emergency Services (Enhanced 911) allow Customers to reach appropriate emergency services, including: police, fire and hospital medical services. Enhanced 911 Service has the ability to selectively route an emergency Call to the primary 911 provider so that it reaches the correct emergency service located closest to the Caller. In addition, Enhanced 911 Service enables the Customer's address and telephone information to be displayed to the person handling the 911 Call. The Company will provide access to 911 and E911 services either directly or through arrangements with other telecommunications carriers.

**3.6.23 Remote Call Forwarding (RCF)** - RCF allows all calls dialed to a telephone number equipped for RCF service to be automatically forwarded to another dialable telephone number. This service enables a customer to list a local directory number that is forwarded to a different city or exchange. Each RCF service allows for the forwarding of one call at a given time. The RCF customer is responsible for any applicable usage rates/charges between the RCF number and the terminating number.

**Conditions:**

1. RCF service is not offered when the answering location for a forwarded call is a coin/coinless, Semi-public/public telephone service.
2. The Company cannot guarantee the grade of transmission on remotely forwarded calls. Normal grade end-to-end transmission is not guaranteed because transmission characteristics may vary depending on distance and routing required to complete the forwarded portion of the call.

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**SECTION 3 - DESCRIPTION OF SERVICE (Cont'd..)**

**3.6 Additional Local Exchange Service Offerings (Cont'd.)**

**3.6.23 Remote Call Forwarding (RCF) (Cont'd.)**

3. RCF service will only be provided when, in the judgement of the Company, the customer subscribes to sufficient RCF facilities at the terminating (answering) location to adequately handle calls without impairing, disrupting or deteriorating any services offered by the Company. In the event that the use of RCF service causes impairment, disruption or deterioration, the Company shall have the right to discontinue the RCF service.

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**SECTION 3 - DESCRIPTION OF SERVICE (Cont'd.)**

**3.7 Miscellaneous Service Charges**

**3.7.1 Order Change**

An Order Change is a change in the Customer's service initiated by the Customer.

**3.7.2 Telephone Number Change**

A Telephone Number Change is a change in the Customer's telephone number.

**3.7.3 Bad Check Charge**

If payment for Service is made by a check, draft, or similar instrument (collectively "Check") that is returned to the Company unpaid by a bank or another financial institution for any reason, the Company will bill the Customer a returned check charge. In addition, the Customer may be required to replace the returned Check with a payment in cash or equivalent to cash, such as cashier's check, certified check or money order.

**3.7.4 Reconnection**

Reconnection charges occur where service to an existing Customer has been discontinued for proper cause, and the Customer desires to resume service with the Company. Where a Customer desires reconnection, the Customer will be charged a fee to cover the cost to the Company of restoring service to the Customer.

**3.7.5 Expedite Installation**

Expedite Installation charges occur when Customer has requested service installation sooner than the normal schedule.

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**SECTION 3 - DESCRIPTION OF SERVICE (Cont'd.)**

**3.7 Miscellaneous Service Charges (Cont'd.)**

**3.7.6 Service Premises Visit**

Service Visit charges occur when Customer has requested a service visit to the customer premises.

**3.7.7 Non-routine Installation**

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in unusual locations. In such cases, charges based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to weekends, holidays, and/or night hours, additional charges may apply.

**3.7.8 Missed Appointment Charge**

When the Company and the Customer have agreed to an installation date and time, and the Customer is not available at the premises to allow for installation of service at the appointed time, a Missed Appointment Charge will apply.

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**SECTION 4 – MAXIMUM RATES AND CHARGES****4.1 Local Exchange Service Offerings****4.1.1 Business Local Exchange Service***Flat Rate Service:*

Monthly recurring charge, per line: \$135.00

Non-recurring charge, per line: \$300.00

**4.1.2 Business Trunk Line Service**

Monthly recurring charge, per line: \$180.00

Non-recurring charge, per line: \$300.00

Hunting Service, per line: \$ 45.00

Hunting Maintenance, per event \$ 60.00

**4.1.3 DID Installation**

Per first ten (10) numbers: \$2,745.00

Monthly recurring charge: \$ 15.00

Per additional ten (10) numbers: \$ 60.00

Monthly recurring charge: \$ 15.00

**4.1.4 DID Trunk Termination Installation**

Non-recurring charge: \$ 225.00

Monthly recurring charge: \$ 30.00

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SECTION 4 – MAXIMUM RATES AND CHARGES (Cont'd.)4.2 Additional Local Exchange Service Offerings4.2.1 Directory Assistance4.2.1.A Directory Assistance Service

First three (3) Calls:	\$ 0.00
Per each additional Call:	\$ 3.00

4.2.1.B Directory Assistance Call Completion Service

Per Call Completion:	\$ 2.55
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4.2.1.C Operator Services

Station-to-Station Collect, Per Call	\$ 1.50
Per minute:	\$ 0.75
Person-to-Person Collect, Per Call	\$ 1.50
Per minute:	\$ 0.75
Calling Card Service, Per Call	\$ 1.50
Operator-Dialed Surcharge	\$ 1.50
BLV, Per Call	\$ 6.00
Emergency Interrupt, Per Call	\$ 1.50
<i>Requires BLV</i>	

4.2.2 Directory Listings

1st Listing:	<i>no charge</i>
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Per Additional Information Listing:	
Recurring monthly charge:	\$ 6.00
Non-recurring charge, per listing	\$60.00
Existing Listing Change, per listing	\$60.00

4.2.3 Directories

There is no charge for one (1) White Pages Directory per Customer per year.

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**SECTION 4 – MAXIMUM RATES AND CHARGES** (Cont'd.)**4.2 Additional Local Exchange Service Offerings** (Cont'd.)**4.2.4 Caller ID Number**

Monthly recurring charge:	\$21.00
Non-recurring charge:	\$30.00

**4.2.5 Caller ID with Name and Number**

Monthly recurring charge:	\$30.00
Non-recurring charge:	\$30.00

**4.2.6 Call Forwarding-No Answer**

Monthly recurring charge:	\$ 9.00
Non-recurring charge:	\$30.00

**4.2.7 Call Forwarding-Busy**

Monthly recurring charge:	\$ 9.00
Non-recurring charge:	\$30.00

**4.2.8 Call Forwarding-Universal**

Monthly recurring charge:	\$ 9.00
Non-recurring charge:	\$30.00

**4.2.9 Call Waiting/Cancel Call Waiting**

Monthly recurring charge:	\$10.50
Non-recurring charge:	\$30.00

**4.2.10 Call Transfer**

Monthly recurring charge:	\$11.25
Non-recurring charge:	\$30.00

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SECTION 4 – MAXIMUM RATES AND CHARGES (Cont'd.)4.2 Additional Local Exchange Service Offerings (Cont'd.)4.2.11 Three-Way Calling

Monthly recurring charge:	\$11.25
Non-recurring charge:	\$30.00

4.2.12 Last Number Redial

Monthly recurring charge:	\$ 9.00
Non-recurring charge:	\$30.00

4.2.13 Speed Calling

Monthly recurring charge (30 code):	\$12.00
Non-recurring charge:	\$30.00

4.2.14 Call Park

Monthly recurring charge:	\$ 9.00
Non-recurring charge:	\$30.00

4.2.15 Distinctive Ring

Monthly recurring charge:	\$ 9.00
Non-recurring charge:	\$30.00

4.2.16 Calling Number Delivery Block

Monthly recurring charge:	<i>no charge</i>
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SECTION 4 – MAXIMUM RATES AND CHARGES (Cont'd.)

4.2 Additional Local Exchange Service Offerings (Cont'd.)

4.2.17 Anonymous Call Rejection

Monthly recurring charge:	\$ 9.00
Non-recurring charge:	\$30.00

4.2.18 Automatic Busy Redial

Monthly recurring charge:	\$ 9.00
Charge per use:	\$ 2.25
Non-recurring charge:	\$30.00

4.2.19 Automatic Call Return

Monthly recurring charge:	\$ 9.00
Charge per use:	\$ 2.25
Non-recurring charge:	\$30.00

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SECTION 4 – MAXIMUM RATES AND CHARGES (Cont'd.)4.2 Additional Local Exchange Service Offerings (Cont'd.)4.2.20 Call Blocking/Toll Restriction4.2.20.A 900/976 Blocking

Monthly recurring charge:	No charge
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4.2.20.B 1+ Long Distance Blocking

Monthly recurring charge:	\$3.00
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4.2.20.C Directory Service Blocking

Monthly recurring charge:	\$3.00
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4.2.20.D Operator Service Blocking

Monthly recurring charge:	\$3.00
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4.2.20.E International Call Blocking

Monthly recurring charge:	\$3.00
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4.2.20.F 3rd Party/Collect Call Blocking

Monthly recurring charge:	\$3.00
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4.2.21 Local Number Portability

Where applicable, the Company will assess on End User Customers a monthly Local Number Portability ("LNP") fee or fees to recover the Company's costs of porting the Customer's number/s from its existing carrier to the Company.

Per month charges:

Per line:	\$ 1.05
Per PBX trunk:	\$ 9.45

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**SECTION 4 – MAXIMUM RATES AND CHARGES (Cont'd.)**

**4.2 Additional Local Exchange Service Offerings (Cont'd.)**

**4.2.22 Remote Call Forwarding**

Per Line:

Monthly recurring charge:	\$150.00
Non-recurring charge (if after installation):	\$150.00

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SECTION 4 – MAXIMUM RATES AND CHARGES (Cont'd.)4.3 Miscellaneous Charges4.3.1 Order Change

Per change: \$150.00

4.3.2 Telephone Number Change

Per change: \$150.00

4.3.3 Bad Check Charge

Per returned check: \$75.00

4.3.4 Reconnection

Per line: ICB

4.3.5 Expedite Charge

Per Order: ICB

4.3.6 Service Premise Visit

Per hour: \$450.00

4.3.7 Non-routine Installation

ICB

4.3.8 Missed Appointment Charge

Per occurrence \$750.00

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**SECTION 5 – PROMOTIONAL OFFERINGS**

**5.1 Promotions**

From time to time, the Company, in compliance with all Commission regulations, may offer services or waive or vary service rates for promotional, market research or other similar business purposes.

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**SECTION 6 – CURRENT PRICE LIST****6.1 Local Exchange Service Offerings****6.1.1 Business Local Exchange Service***Flat Rate Service:*

Monthly recurring charge, per line: \$ 45.00

Non-recurring charge, per line: \$100.00

**6.1.2 Business Trunk Line Service**

Monthly recurring charge, per line: \$ 60.00

Non-recurring charge, per line: \$100.00

Hunting Service, per line: \$ 15.00

Hunting Maintenance, per event \$ 20.00

**6.1.3 DID Installation**

Per first ten (10) numbers: \$915.00

Monthly recurring charge: \$ 5.00

Per additional ten (10) numbers: \$ 20.00

Monthly recurring charge: \$ 5.00

**6.1.4 DID Trunk Termination Installation**

Non-recurring charge: \$ 75.00

Monthly recurring charge: \$ 10.00

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SECTION 6 – CURRENT PRICE LIST (Cont'd.)6.2 Additional Local Exchange Service Offerings6.2.1 Directory Assistance6.2.1.A Directory Assistance Service

First three (3) Calls:	\$ 0.00
Per each additional Call:	\$ 1.00

6.2.1.B Directory Assistance Call Completion Service

Per Call Completion:	\$ 0.85
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6.2.1.C Operator Services

Station-to-Station Collect, Per Call	\$ 0.50
Per minute:	\$ 0.25
Person-to-Person Collect, Per Call	\$ 0.50
Per minute:	\$ 0.25
Calling Card Service, Per Call	\$ 0.50
Operator-Dialed Surcharge	\$ 0.50
BLV, Per Call	\$ 2.00
Emergency Interrupt, Per Call	\$ 0.50
<i>Requires BLV</i>	

6.2.2 Directory Listings

1st Listing:	<i>no charge</i>
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Per Additional Information Listing:	
Recurring monthly charge:	\$ 2.00
Non-recurring charge, per listing	\$20.00
Existing Listing Change, per listing	\$20.00

6.2.3 Directories

There is no charge for one (1) White Pages Directory per Customer per year.

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**SECTION 6 – CURRENT PRICE LIST (Cont'd.)****6.2 Additional Local Exchange Service Offerings (Cont'd.)****6.2.4 Caller ID Number**

Monthly recurring charge:	\$ 7.00
Non-recurring charge:	\$10.00

**6.2.5 Caller ID with Name and Number**

Monthly recurring charge:	\$10.00
Non-recurring charge:	\$10.00

**6.2.6 Call Forwarding-No Answer**

Monthly recurring charge:	\$ 3.00
Non-recurring charge:	\$10.00

**6.2.7 Call Forwarding-Busy**

Monthly recurring charge:	\$ 3.00
Non-recurring charge:	\$10.00

**6.2.8 Call Forwarding-Universal**

Monthly recurring charge:	\$ 3.00
Non-recurring charge:	\$10.00

**6.2.9 Call Waiting/Cancel Call Waiting**

Monthly recurring charge:	\$ 3.50
Non-recurring charge:	\$10.00

**6.2.10 Call Transfer**

Monthly recurring charge:	\$ 3.75
Non-recurring charge:	\$10.00

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SECTION 6 – CURRENT PRICE LIST (Cont'd.)6.2 Additional Local Exchange Service Offerings (Cont'd.)6.2.11 Three-Way Calling

Monthly recurring charge:	\$ 3.75
Non-recurring charge:	\$10.00

6.2.12 Last Number Redial

Monthly recurring charge:	\$ 3.00
Non-recurring charge:	\$10.00

6.2.13 Speed Calling

Monthly recurring charge (30 code):	\$ 4.00
Non-recurring charge:	\$10.00

6.2.14 Call Park

Monthly recurring charge:	\$ 3.00
Non-recurring charge:	\$10.00

6.2.15 Distinctive Ring

Monthly recurring charge:	\$ 3.00
Non-recurring charge:	\$10.00

6.2.16 Calling Number Delivery Block

Monthly recurring charge:	<i>no charge</i>
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**SECTION 6 – CURRENT PRICE LIST (Cont'd.)**

**6.2 Additional Local Exchange Service Offerings (Cont'd.)**

**6.2.17 Anonymous Call Rejection**

Monthly recurring charge:	\$ 3.00
Non-recurring charge:	\$10.00

**6.2.18 Automatic Busy Redial**

Monthly recurring charge:	\$ 3.00
Charge per use:	\$ 0.75
Non-recurring charge:	\$10.00

**6.2.19 Automatic Call Return**

Monthly recurring charge:	\$ 3.00
Charge per use:	\$ 0.75
Non-recurring charge:	\$10.00

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**SECTION 6 – CURRENT PRICE LIST** (Cont'd.)**6.2 Additional Local Exchange Service Offerings** (Cont'd.)**6.2.20 Call Blocking/Toll Restriction****6.2.20.A 900/976 Blocking**

Monthly recurring charge: No charge

**6.2.20.B 1+ Long Distance Blocking**

Monthly recurring charge: \$1.00

**6.2.20.C Directory Service Blocking**

Monthly recurring charge: \$1.00

**6.2.20.D Operator Service Blocking**

Monthly recurring charge: \$1.00

**6.2.20.E International Call Blocking**

Monthly recurring charge: \$1.00

**6.2.20.F 3rd Party/Collect Call Blocking**

Monthly recurring charge: \$1.00

**6.2.21 Local Number Portability**

Where applicable, the Company will assess on End User Customers a monthly Local Number Portability ("LNP") fee or fees to recover the Company's costs of porting the Customer's number/s from its existing carrier to the Company.

Per month charges:

Per line: \$ 0.35

Per PBX trunk: \$ 3.15

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**SECTION 6 – CURRENT PRICE LIST (Cont'd.)**

**6.2 Additional Local Exchange Service Offerings (Cont'd.)**

**6.2.22 Remote Call Forwarding**

Per Line:

Monthly recurring charge: \$50.00

Non-recurring charge (if after installation): \$50.00

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SECTION 6 – CURRENT PRICE LIST (Cont'd.)6.3 Miscellaneous Charges6.3.1 Order Change

Per change: \$50.00

6.3.2 Telephone Number Change

Per change: \$50.00

6.3.3 Bad Check Charge

Per returned check: \$25.00

6.3.4 Reconnection

Per line: ICB

6.3.5 Expedite Charge

Per Order: ICB

6.3.6 Service Premise Visit

Per hour: \$150.00

6.3.7 Non-routine Installation

ICB

6.3.8 Missed Appointment Charge

Per occurrence \$250.00

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Effective:

# ATTACHMENT

"C"

N/A

# ATTACHMENT

"D"

N/A

# ATTACHMENT

"E"

Cbeyond possesses the managerial expertise and experience necessary to provide the services it proposes herein. In support of its application, Cbeyond submits the following information to demonstrate that it has sufficient managerial telecommunications experience and expertise adequate to ensure its provision of basic local exchange telecommunications services within the State of Arizona.

Cbeyond's Board of Directors consists of the following people:

**James F. Geiger**

Founder, President and CEO  
Cbeyond Communications, LLC

**Richard I. Goldstein**

Managing Director  
Associated Group, LLC

**James N. Perry, Jr.**

Managing Director  
Madison Dearborn Partners

**Douglas C. Grissom**

Director  
Madison Dearborn Partners

**Anthony M. Abate**

General Partner  
Ironsides Ventures

**Michael Yagemann**

Managing Director  
Vantage Point Venture Partners

**D. Scott Luttrell**

Founder and CEO  
Luttrell Capital Managent

All of the Members of the Board of Directors may be reached at:

CBEYOND COMMUNICATIONS, LLC  
320 Interstate North Parkway  
Suite 300

Atlanta, Georgia 30339  
(678) 424-2400

The Management Team at Cbeyond includes:

**James F. Geiger**

Founder, President and CEO  
Cbeyond Communications, LLC

As founder and chief executive officer of Cbeyond Communications, LLC, Jim Geiger drives Cbeyond's strategy and its vision of becoming a powerful force in the telecommunications industry by changing the customer experience for the underserved and growing small business market. According to Mr. Geiger, "Cbeyond's mission is to create a telecommunications company of a new breed. Each member of the Cbeyond team will have the customer as a single, top priority. Together, as a company, we will support superior customer service with the best, most innovative and cost-effective applications of next-generation Internet technologies."

Before he founded Cbeyond, Mr. Geiger was senior vice president and chief marketing officer of Intermedia Communications, where he was responsible for strategic planning, business development, regulatory affairs, and product management. From 1995 to 1999, he had the additional responsibility of building and leading Intermedia's highly productive 500-person sales organization. Mr. Geiger was also in charge of Intermedia's complex Digex Web-hosting organization from its acquisition until just prior to its carve-out IPO in February 1999. Before he joined Intermedia, Mr. Geiger was a founding principal of FiberNet; before becoming president and CEO in 1993, he was FiberNet's vice president of sales and marketing. In the late 1980s Mr. Geiger held various sales and marketing management positions at Frontier Communications, Inc.. He began his career at Price Waterhouse and received his bachelor's degree in public accounting and pre-law from Clarkson University.

**Richard I. Goldstein**

Managing Director  
Associated Group, LLC

Richard I. Goldstein is a Managing Director of Associated Group, LLC, a venture capital firm primarily engaged in the telecommunications and Internet commerce market segments. Principals of The Associated Group, Inc. founded associated Group, a multi-billion dollar publicly traded owner and operator of communications-related businesses and assets, of which Mr. Goldstein was a Vice President. While at Associated, Mr. Goldstein assisted in establishing Teligent, Inc., of which he is a former director, and was responsible for operating Associated's cellular telephone operations. Mr. Goldstein has counseled many early stage companies and is a member of the Board of Directors of PetPlace.com, Inc. Mr. Goldstein and his wife, Vicki, have three children and reside in Wynnwood, Pennsylvania.

**James N. Perry, Jr.**  
Managing Director  
Madison Dearborn Partners

Prior to co-founding MDP, Mr. Perry was with First Chicago Venture Capital for eight years. Previously, he was with The First National Bank of Chicago. Mr. Perry concentrates on investments in the communications industry and currently serves on the Boards of Directors of Allegiance Telecom, Inc., @link Networks, Inc., CompleTel Europe LLC, Clearnet Communications Inc., Enews.com, Focal Communications Corporation, Madison River Telephone Company, LLC, Omnipoint Corporation, Reiman Holding Company, LLC, and Wireless One Network, L.P. Perry received his B.A. from University of Pennsylvania and his M.B.A. from the University of Chicago.

**Douglas C. Grissom**  
Director  
Madison Dearborn Partners

Prior to joining MDP, Mr. Grissom was with Bain Capital, Inc. in private equity, McKinsey & Company, Inc. in management consulting, and Goldman, Sachs & Co. in investment banking. Mr. Grissom concentrates on investments in the communication industry. Grissom currently sits on the Board of Directors of Cbeyond Communications, LLC, Looking Glass Networks, LLC, Neoworld, Inc., and Stor@bility, Inc." Grissom received his A. B. from Amherst College and his M.B.A., Harvard Graduate School of Business Administration

**Anthony M. Abate**  
General Partner  
Ironsides Ventures

Anthony M. Abate is a Managing Director of Ironside Ventures. He brings over 17 years of experience in the technology and investment fields. As a General Partner at Battery Ventures, Mr. Abate led several investments. Prior to Battery, he was a Vice President at Whitney & Co., one of the oldest venture firms in the country. His most notable investments at both Whitney and Battery include Telecorp PCS (acquired by AT&T); Homestore; USinternetworking; NBX (acquired by 3Com); Digital Television Services (acquired by Pegasus Communications); Cbeyond Communications; and Looking Glass Networks. He also spent time at McKinsey & Company, and was an Officer in the US Air Force. Mr. Abate holds a BSE from Duke University and an MBA from Harvard Business School.

**Michael Yagemann**  
Managing Director  
Vantage Point Venture Partners

Michael has been a prominent attorney, advisor and investor in technology, media and communications for more than 20 years. In the course of his career, he has advised companies such as Vulcan Ventures, Time Warner and The Walt Disney Company. He joins VantagePoint from Greenbridge Capital, a communications and technology private equity firm he founded in

1999, where he also served as Managing Member.

Prior to founding Greenbridge, Michael served as Co-Founder and Co-Head of the Media and Telecommunications group at Montgomery Securities (which was acquired by NationsBank and subsequently became Banc of America Securities). While at BofA, he led the firm's equity, debt and M&A activity in telecommunications, media and entertainment.

Previously, Michael was Co-Head of Bear Stearns' Media and Entertainment group, where he worked closely with Vulcan Ventures and their investments in Charter Communications, AOL, DreamWorks, and Ticketmaster, among others. Michael began his career at the law firm of Irell & Manella in Los Angeles, where he practiced law for nearly ten years in the areas of corporate, corporate securities, tax, entertainment and intellectual property law.

Michael holds a BA in Psychology from the University of Colorado and a JD from Stanford Law School.

**D. Scott Luttrell**

Founder and CEO

Luttrell Capital Management

D. Scott Luttrell is the founder and CEO of Luttrell Capital Management, a Tampa based investment company specializing in funds management and financial consulting services, alternative asset, private equity and real estate investing. Luttrell is also founder and CEO of M.L.D. Company, a real estate investment company.

Mr. Luttrell served from 1991 through 2000 as principal and senior officer of Caxton Associates, LLC, a New York based diversified investment firm. Luttrell's responsibilities with Caxton included Senior Trading Manager, Director of Global Fixed Income and a senior member of the firm's portfolio risk management committee.

Luttrell has diverse investment experience in private equity, fixed income and the alternative investment asset class. Particular private equity investment focus includes information technologies, telecommunications services, Internet services, oil and gas, financial services, product manufacturing and real estate. Luttrell serves on the Board of Directors of several private companies.

Mr. Luttrell was a member at the Chicago Board of Trade from 1978 through 2002, where prior to formation of Luttrell Capital Management in 1988, he was involved in various trading and investment activities as an officer and partner of Chicago based TransMarket Group and related entities.

Mr. Luttrell received his college degree in Business Administration/Finance from Southern Methodist University in Dallas Texas.

Mr. Luttrell is active in various community service organizations, including serving as the Chairman of the Board of the Tampa Metropolitan YMCA, Chairman of the Board of Young

Life of Tampa and a Board of Director of Honduras Outreach International. Luttrell is founder and trustee of The Light Foundation, a Tampa based charitable foundation.

# ATTACHMENT

"F"

## Phoenix Model

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
<b>Customers</b>																		
Beginning										0	25	65	114	173	241	319	406	502
Gross Adds										25	40	50	70	80	80	90	100	110
Churn										0	(0)	(1)	(1)	(2)	(2)	(3)	(4)	(5)
Net Adds										25	40	49	59	68	78	87	96	105
Ending										25	65	114	173	241	319	406	502	607
Average										13	45	89	144	207	280	362	454	554
<b>Revenues</b>																		
Revenues										\$9,375	\$33,656	\$67,070	\$107,649	\$155,323	\$210,019	\$271,669	\$340,202	\$415,550
ARRU										\$750	\$750	\$750	\$750	\$750	\$750	\$750	\$750	\$750
<b>Operating Expenses</b>																		
Cost of Goods Sold										\$60,000	\$75,000	\$90,000	\$105,000	\$122,068	\$141,465	\$163,167	\$187,153	\$213,398
% of Revenues										#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Gross Profit										(\$50,000)	(\$41,344)	(\$22,930)	\$2,649	\$33,255	\$68,555	\$108,502	\$153,049	\$202,151
% of Revenues										#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Selling, General & Administrative										\$300,000	\$350,000	\$400,000	\$425,000	\$450,000	\$475,000	\$500,000	\$525,000	\$550,000
% of Revenues										#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Adjusted EBITDA										(\$350,625)	(\$391,344)	(\$422,930)	(\$422,351)	(\$416,745)	(\$406,445)	(\$391,498)	(\$371,951)	(\$347,849)
% of Revenues										#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Depreciation										\$43,194	\$48,972	\$53,694	\$57,778	\$62,472	\$67,778	\$73,694	\$80,222	\$87,361
% of Revenues										#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
Operating Income										(\$393,819)	(\$440,316)	(\$476,625)	(\$480,129)	(\$479,217)	(\$474,223)	(\$465,193)	(\$452,173)	(\$435,210)
% of Revenues										#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!
<b>Capital Expenditures</b>																		
Network										\$500,000	\$200,000	\$100,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
Customer										\$55,000	\$88,000	\$110,000	\$132,000	\$154,000	\$176,000	\$198,000	\$220,000	\$242,000
Total										\$655,000	\$288,000	\$210,000	\$157,000	\$179,000	\$201,000	\$223,000	\$245,000	\$267,000

[illegible]

ROSHKA DeWULF & PATTEN

ROSHKA DeWULF & PATTEN, PLC  
ATTORNEYS AT LAW  
ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET  
SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

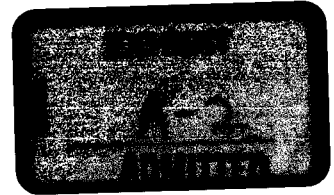
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AZ CORP COMMISSION  
DOCUMENT CONTROL

March 19, 2007

Ms. Candrea Allen  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007



RE: Staff's Letter of Insufficiency dated January 16, 2007 and 1<sup>st</sup> set of Data Requests  
to Cbeyond Communications, LLC  
Docket No. T-020497A-06-0802

Dear Ms. Allen:

Enclosed please find the responses to Staff's Letter of Insufficiency and 1<sup>st</sup> set of data requests to Cbeyond Communications, LLC.

Sincerely,

Handwritten signature of Michael W. Patten.

Michael W. Patten

MWP:mi  
Enclosures  
cc: Docket Control

CBeyond COMMUNICATIONS, LLC'S  
RESPONSES TO STAFF'S FIRST SET OF DATA REQUESTS  
DOCKET NO. T-20497A-06-0802  
March 19, 2007

Please make certain that each numbered item and each part of the item is answered completely. In order for Staff to continue with its review of this application, the following information must be submitted:

- 1.1                   The response to question (A-1) of the application for a CC&N indicates that Cbeyond is currently applying for approval to provide resold long distance and facilities-based local exchange telecommunications services. However, responses to questions (A-14) and (A-21) indicate that Cbeyond is applying for resold long distance and facilities-based long distance telecommunications services. Please clarify the type(s) of service(s) for which Cbeyond is applying for a CC&N.

**RESPONSE:**           **Cbeyond is requesting authority to provide facilities-based local exchange service and resold long distance services.**

CBeyond COMMUNICATIONS, LLC'S  
RESPONSES TO STAFF'S FIRST SET OF DATA REQUESTS  
DOCKET NO. T-20497A-06-0802  
March 19, 2007

1-2. In its response to question (A-18) of the application, the Applicant provided a list of the states in which it has applied for authority to provide telecommunications services. Please supplement this data by specifying the rates that the Company proposes to charge for the services that it intends to offer in the other jurisdictions. If there is a difference between the rates that the Company Proposes to charge in other jurisdictions for similar services, please identify and indicate the amount of the difference and provide an explanation for the difference in the rates in Arizona.

RESPONSE: Please see the attached *Exhibit A*, outlining the prices for the same services in the other jurisdictions. Any price differences between what the Company proposes to charge in Arizona and it charges elsewhere reflects a difference in the cost of providing service between Arizona and the other jurisdiction.

## Cbeyond Tariff Rate Comparison – Operating States

Service	Arizona Rate	California Rate	Colorado Rate	Georgia Rate	Illinois Rate	Missouri Rate	Pennsylvania Rate
Business Local Exchange Service							
- Flat Rate Service MRC	\$45.00	\$30.00	\$60.00	\$45.00	\$45.00	\$45.00	\$15.00
- Flat Rate Service NRC	\$100.00	\$75.00	\$75.00	\$100.00	\$100.00	\$100.00	\$75.00
Business Trunk Line Service							
- Per line, MRC	\$60.00	\$35.00	\$80.00	\$60.00	\$60.00	\$60.00	\$25.00
- Per line, NRC	\$100.00	\$75.00	\$75.00	\$100.00	\$100.00	\$100.00	\$75.00
- Hunting, Service, per line	\$15.00	\$15.00	\$15.00	\$15.00	\$15.00	\$15.00	\$15.00
- Hunting Maintenance, per event	\$20.00	---	---	\$20.00	\$20.00	\$20.00	---
DID Installation							
- Per 10 numbers	\$915.00	\$915.00	\$915.00	\$915.00	\$915.00	\$915.00	\$915.00
- MRC	\$5.00	\$2.00	\$2.00	\$5.00	\$5.00	\$5.00	\$2.00
- Per additional 10 numbers	\$20.00	\$15.00	\$15.00	\$20.00	\$20.00	\$20.00	\$15.00
- MRC	\$5.00	\$2.00	\$2.00	\$5.00	\$5.00	\$5.00	\$2.00
DID Trunk Termination Installation							
- NRC	\$75.00	\$75.00	\$75.00	\$75.00	\$75.00	\$75.00	\$75.00
- MRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Directory Assistance							
- First 3 calls	\$0.00	\$0.00	---	\$0.00	\$0.00	\$0.00	\$0.00
- Per each additional call	\$1.00	\$0.85	---	\$1.00	\$0.85	\$0.85	\$0.85

Service	Arizona Rate	California Rate	Colorado Rate	Georgia Rate	Illinois Rate	Missouri Rate	Pennsylvania Rate
Directory Assistance Call Completion Service							
- Per Call Completion	\$0.85	\$0.85		\$0.85	\$0.85	\$0.85	\$0.85
Operator Services							
- Station-to-Station Collect, Per Call	\$0.50	\$2.20	\$0.50	\$0.50	\$0.50	\$0.50	\$2.20
- Station-to-Station Collect, Per Minute	\$0.25	\$0.25	\$0.11	\$0.25	\$0.23	\$0.25	\$0.25
- Person-to-Person, Per Call	\$0.50	\$4.85	\$0.50	\$0.50	\$0.21	\$0.50	\$4.85
- Person-to-Person, Per Minute	\$0.25	\$0.25	\$0.11	\$0.25	\$0.50	\$0.25	\$0.25
Calling Card Service, Per Call	\$0.50	\$0.90	\$0.50	\$0.50	\$0.50	\$0.50	\$0.90
Operator-Dialed Surcharge	\$0.50	\$1.00	\$0.50	\$0.50	\$0.50	\$0.50	\$1.00
BLV, Per Call	\$2.00	\$6.45	\$1.25	\$2.00	\$2.00	\$2.00	\$6.45
Emergency Interrupt, Per Call (requires BLV)	\$0.50	\$6.45	\$2.00	\$0.50	\$0.50	\$0.50	\$6.45
Directory Listings							
- First Listing	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
- Per Additional Information Listing, per listing, MRC	\$2.00	\$10.00	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
- Per Additional Information Listing, per listing, NRC	\$20.00	\$2.00	\$10.00	\$20.00	\$20.00	\$20.00	\$10.00

Service	Arizona Rate	California Rate	Colorado Rate	Georgia Rate	Illinois Rate	Missouri Rate	Pennsylvania Rate
Existing listing Change, per listing	\$20.00	—	—	\$20.00	\$20.00	\$20.00	—
Directories							
White Pages Directory per customer, per year	\$0.00	\$0.00	—	\$0.00	\$0.00	\$0.00	\$0.00
Caller ID Number							
- MRC	\$7.00	\$7.00	\$7.00	\$7.00	\$7.00	\$7.00	\$7.00
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Caller ID with Name and Number							
- MRC	\$10.00	—	\$7.00	\$10.00	\$10.00	\$10.00	—
- NRC	\$10.00	—	\$10.00	\$10.00	\$10.00	\$10.00	—
Call Forwarding No Answer							
- MRC	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	—
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	—
Call Forwarding Busy							
- MRC	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	—
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	—
Call Forwarding Universal							
- MRC	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Call Waiting/Cancel Call Waiting							
- MRC	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Call Transfer							
- MRC	\$3.75	\$3.75	\$3.75	\$3.75	\$3.75	\$3.75	\$3.75
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00

Service	Arizona Rate	California Rate	Colorado Rate	Georgia Rate	Illinois Rate	Missouri Rate	Pennsylvania Rate
Three-Way Calling							
- MRC	\$3.75	\$3.75	\$3.75	\$3.75	\$3.75	\$3.75	\$3.75
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Last Number Redial							
- MRC	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Speed Calling							
- MRC (30 code)	\$4.00	\$4.00		\$4.00	\$4.00	\$4.00	\$4.00
- NRC	\$10.00	\$10.00		\$10.00	\$10.00	\$10.00	\$10.00
Call Park							
- MRC	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Disinctive Ring							
- MRC	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Calling Number Delivery Block							
- MRC	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Anonymous Call Rejection							
- MRC	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Automatic Busy Redial							
- MRC	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
- Charge Per Use	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Automatic Call Return							
- MRC	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
- Charge Per Use	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00

Service	Arizona Rate	California Rate	Colorado Rate	Georgia Rate	Illinois Rate	Missouri Rate	Pennsylvania Rate
Call Blocking/Fall Restriction							
- 900/976 (MRC)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1.00
- 1+ Long Distance Blocking (MRC)	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00
- Directory Service Blocking (MRC)	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00
- Operator Service Blocking (MRC)	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00
- International Call Blocking (MRC)	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00
3 <sup>rd</sup> Party/Collect Call Blocking (MRC)	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00
Local Number Portability							
- Per line (MRC)	\$0.35	\$0.24	\$0.35	\$0.35	\$0.35	\$0.35	\$0.24
- Per PBX trunk (MRC)	\$3.15	\$2.16	\$3.15	\$3.15	\$3.15	\$3.15	\$2.16
Remote Call Forwarding							
- MRC	\$50.00	—	\$50.00	\$50.00	—	—	—
- NRC	\$50.00	—	\$50.00	\$50.00	—	—	—
Miscellaneous Charges							
- Order Charge	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00
- Telephone Number Change	\$50.00	\$50.00	\$25.00	\$50.00	\$50.00	\$50.00	\$25.00
- Bad Check Charge	\$25.00	\$20.00	\$20.00	\$25.00	\$25.00	\$25.00	\$20.00
- Reconnection, per line	ICB	\$50.00	\$40.00 (business)	ICB	ICB	\$100.00	\$50.00

Service	Arizona Rate	California Rate	Colorado Rate	Georgia Rate	Illinois Rate	Missouri Rate	Pennsylvania Rate
- Expedite Charge	ICB	—	—	ICB	ICB	\$100.00	—
- Service Premise Visit, per hour	\$150.00	—	—	\$150.00	\$100.00	\$150.00	—
- Non-Routine Installation	ICB	—	—	ICB	ICB	—	—
- Missed Appointment Charge	\$250.00	—	—	\$250.00	\$100.00	\$250.00	—

CBEYOND COMMUNICATIONS, LLC'S  
RESPONSES TO STAFF'S FIRST SET OF DATA REQUESTS  
DOCKET NO. T-20497A-06-0802  
March 19, 2007

1-3. Please explain how your company calculated the actual maximum and actual minimum that will be contained in your tariffs for each of your services.

RESPONSE: **Cbeyond based the minimum and maximum charges outlined within its tariff on the costs of providing the service and the percentage by which the Company may increase its rates based upon its increases in costs and services in the other jurisdictions where it provides service.**

CBEYOND COMMUNICATIONS, LLC'S  
RESPONSES TO STAFF'S FIRST SET OF DATA REQUESTS  
DOCKET NO. T-20497A-06-0802  
March 19, 2007

1-4. Please complete and submit an Affidavit of Publication Form.  
Refer to question (A-16) of the application.

RESPONSE: **Cbeyond will require a hearing and will publish the form of  
notice required by the Hearing Division.**

CBeyond COMMUNICATIONS, LLC'S  
RESPONSES TO STAFF'S FIRST SET OF DATA REQUESTS  
DOCKET NO. T-20497A-06-0802  
March 19, 2007

1-5. Please submit the financial information for Cbeyond, Inc., Cbeyond's parent company, for the two (2) most recent years including the income statement, audit report, retained earnings balance, and any/all related notes. Refer to question (B-2) of the application.

**RESPONSE:** Applicant's parent company, Cbeyond, Inc., is a holding company with Applicant as its only subsidiary. Therefore, Cbeyond, Inc. financial statements mirror that of the Applicant.

CBeyond COMMUNICATIONS, LLC'S  
RESPONSES TO STAFF'S FIRST SET OF DATA REQUESTS  
DOCKET NO. T-20497A-06-0802  
March 19, 2007

1-6. Please indicate why you believe that your range of rates is just and reasonable using a competitive market analysis. Your analysis may contain publicly available examples of rates charged by the incumbent or other carriers for similar services or any other information that you believe demonstrates that your actual rates are just and reasonable. Please include any supporting materials. For a list of telecommunications carriers certified in Arizona, go to [www.cc.state.az.us/utility/telecom](http://www.cc.state.az.us/utility/telecom) for a list of Commission-approved telecommunications rates and tariffs, go to [www.cc.state.az.us/utility/tariffs](http://www.cc.state.az.us/utility/tariffs).

RESPONSE: Cbeyond's proposed rates are similar to those it currently charges for the same services in other jurisdictions within which it operates. Additionally, Cbeyond's rates are in line with the range of rates for similar services previously filed by other carriers operating within the State of Arizona, as outlined in the attached *Exhibit C*.

## Cbeyond Tariff Rate Comparison – Other Carriers

Service	Cbeyond Arizona Rate	Cbeyond AZ Maximum Rate	Time Warner Telecom Maximum Rate	XO Communications Services Maximum Rate	Qwest Maximum Rate
Business Local Exchange Service					
- Flat Rate Service MRC	\$45.00	\$135.00	\$55.50	\$98.34	\$91.20
- Flat Rate Service NRC	\$100.00	\$300.00	\$30.00	\$100.00	\$85.00
Business Trunk Line Service					
- Per line, MRC	\$60.00	\$180.00	ICB	\$110.00	\$132.00
- Per line, NRC	\$100.00	\$300.00	ICB	\$100.00	\$220.53
- Hunting, Service, per line	\$15.00	\$45.00	\$67.50 / \$2.00 (\$20.00 – NRC)	\$24.00	\$12.00
- Hunting Maintenance, per event	\$20.00	\$60.00	—	—	—
DID Installation					
- Per 10 numbers	\$915.00	\$2745.00	\$15.00	\$30.00 (per 20 numbers)	\$40.00 (per 20 numbers)
- MRC	\$5.00	\$15.00	\$2.25	\$8.00 (per 20 numbers)	\$9.00 (per 20 numbers)
- Per additional 10 numbers	\$20.00	\$60.00	\$15.00	\$30.00 (per 20 numbers)	\$40.00 (per 20 numbers)
- MRC	\$5.00	\$15.00	\$2.25	\$8.00 (per 20 numbers)	\$9.00 (per 20 numbers)
DID Trunk Termination Installation					
- NRC	\$75.00	\$225.00	—	\$100.00	\$114.00
- MRC	\$10.00	\$30.00	\$50.00	\$90.00	\$135.00
Directory					

Service	Cbeyond Arizona Rate	Cbeyond AZ Maximum Rate	Time Warner Telecom Maximum Rate	XO Communications Services Maximum Rate	Qwest Maximum Rate
Assistance					
- First 3 calls	\$0.00	\$0.00	\$0.90 (per call)	\$1.50 (per call)	\$0.00 (one per month)
- Per each additional call	\$1.00	\$3.00	\$0.90	\$1.50	\$1.15 (per call)
Directory Assistance Call Completion Service					
- Per Call Completion	\$0.85	\$2.55	\$0.52	\$1.00	\$0.00 (within the same LATA)
Operator Services					
- Station-to-Station Collect, Per Call	\$0.50	\$1.50	\$1.95	\$10.50	\$11.40
- Station-to-Station Collect, Per Minute	\$0.25	\$0.75	Based on calling party's normal usage charges	Based on calling party's normal usage charges	\$0.78
- Person-to-Person, Per Call	\$0.50	\$1.50	\$5.25	\$10.50	\$18.00
- Person-to-Person, Per Minute	\$0.25	\$0.75	Based on calling party's normal usage charges	Based on calling party's normal usage charges	\$0.78
Calling Card Service, Per Call	\$0.50	\$1.50	\$1.28	\$1.50	\$9.00
Operator-Dialed Surcharge	\$0.50	\$1.50	\$1.95	\$1.50	—
BLV, Per Call	\$2.00	\$6.00	\$4.50	\$3.00	\$9.00
Emergency Interrupt, Per Call (requires BLV)	\$0.50	\$1.50	\$9.50	\$6.00	\$18.00
Directory Listings					

Service	Cbeyond Arizona Rate	Cbeyond AZ Maximum Rate	Time Warner Telecom Maximum Rate	XO Communications Services Maximum Rate	Qwest Maximum Rate
- First Listing	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
- Per Additional Information Listing, per listing, MRC	\$2.00	\$6.00	\$5.00	\$2.10	\$7.50
- Per Additional Information Listing, per listing, NRC	\$20.00	\$60.00	\$33.00	\$25.00	—
Existing listing Change, per listing	\$20.00	\$60.00		—	—
Directories					
White Pages Directory per customer, per year	\$0.00	\$0.00		\$0.00	\$0.00
Caller ID Number					
- MRC	\$7.00	\$21.00	\$10.05	\$15.00	\$22.35
- NRC	\$10.00	\$30.00	\$10.00	\$15.00	—
Caller ID with Name and Number					
- MRC	\$10.00	\$30.00	\$10.05	\$15.00	\$22.35
- NRC	\$10.00	\$30.00	\$10.00	\$5.00	—
Call Forwarding					
- No Answer					
- MRC	\$3.00	\$9.00	\$10.05	\$15.00	\$12.00
- NRC	\$10.00	\$30.00	\$10.00	\$15.00	—
Call Forwarding - Busy					
- MRC	\$3.00	\$9.00	\$10.05	\$15.00	\$12.00
- NRC	\$10.00	\$30.00	\$10.00	\$15.00	—
Call Forwarding - Universal					

Service	Cbeyond Arizona Rate	Cbeyond AZ Maximum Rate	Time Warner Telecom Maximum Rate	XO Communications Services Maximum Rate	Qwest Maximum Rate
- MRC	\$3.00	\$9.00	\$10.05	\$15.00	\$12.90
- NRC	\$10.00	\$30.00	\$10.00	\$15.00	—
Call					
Waiting/Cancel Call-Waiting					
- MRC	\$3.50	\$10.50	\$10.05	\$15.00	\$21.00
- NRC	\$10.00	\$30.00	\$10.00	\$15.00	—
Call Transfer					
- MRC	\$3.75	\$11.25	\$8.10	\$15.00	\$16.50
- NRC	\$10.00	\$30.00	\$10.00	\$15.00	—
Three-Way Calling					
- MRC	\$3.75	\$11.25	\$5.40	\$15.00	\$10.50
- NRC	\$10.00	\$30.00	\$10.00	\$5.00	—
Last Number Redial					
- MRC	\$3.00	\$9.00	\$4.05	\$15.00	\$9.00
- NRC	\$10.00	\$30.00	\$10.00	\$15.00	—
Speed Calling					
- MRC (30 code)	\$4.00	\$12.00	\$6.75	\$15.00	\$12.00
- NRC	\$10.00	\$30.00	\$10.00	\$15.00	—
Call Park					
- MRC	\$3.00	\$9.00	—	\$5.00	—
- NRC	\$10.00	\$30.00	—	\$10.00	—
Distinctive Ring					
- MRC	\$3.00	\$9.00	—	\$10.00	\$20.85
- NRC	\$10.00	\$30.00	—	\$15.00	—
Calling Number Delivery Block					
- MRC	\$0.00	\$0.00	\$0.00	—	\$0.00
Anonymous Call Rejection					
- MRC	\$3.00	\$9.00	—	\$15.00	—
- NRC	\$10.00	\$10.00	—	\$15.00	—
Automatic Busy Redial					

Service	Cbeyond Arizona Rate	Cbeyond AZ Maximum Rate	Time Warner Telecom Maximum Rate	XO Communications Services Maximum Rate	Qwest Maximum Rate
- MRC	\$3.00	\$3.00	—	—	—
- Charge Per Use	\$0.75	\$2.25	—	—	—
- NRC	\$10.00	\$30.00	—	—	—
Automatic Call Return					
- MRC	\$3.00	\$9.00	—	\$10.50	—
- Charge Per Use	\$0.75	\$2.25	—	\$2.25	—
- NRC	\$10.00	\$30.00	—	\$39.00	—
Call Blocking/Toll Restriction					
- 900/976 (MRC)	\$0.00	\$0.00	\$3.50	\$82.50 (\$9.00 NRC)	\$0.00
- 1+ Long Distance Blocking (MRC)	\$1.00	\$3.00	\$3.50	\$82.50 (\$9.00 NRC)	\$5.00(\$27.50 NRC) - actual charge
- Directory Service Blocking (MRC)	\$1.00	\$3.00	\$3.50	\$82.50 (\$9.00 NRC)	—
- Operator Service Blocking (MRC)	\$1.00	\$3.00	\$3.50	\$82.50 (\$9.00 NRC)	—
- International Call Blocking (MRC)	\$1.00	\$3.00	\$3.50	—	—
3 <sup>rd</sup> Party/Collect Call Blocking (MRC)	\$1.00	\$3.00	\$3.50	—	—
Local Number Portability					
- Per line (MRC)	\$0.35	\$1.05	—	Included in line charges	—
- Per PBX trunk (MRC)	\$3.15	\$9.45	—	Included in line charges	—

Service	Cbeyond Arizona Rate	Cbeyond AZ Maximum Rate	Time Warner Telecom Maximum Rate	XO Communications Services Maximum Rate	Qwest Maximum Rate
Remote Call Forwarding					
- MRC	\$50.00	\$150.00			
- NRC	\$50.00	\$150.00			
Miscellaneous Charges					
- Order Charge	\$50.00	\$150.00			
- Telephone Number Change	\$50.00	\$150.00			\$27.50 (actual charge)
- Bad Check Charge	\$25.00	\$75.00			\$10.00 (actual charge)
- Reconnection, per line	ICB	ICB			\$55.00 (actual charge)
- Expedite Charge	ICB	ICB			\$22.00 (actual charge)
- Service Premise Visit, per hour	\$150.00	\$450.00		\$448.00 (First Hour) \$180.00 (each additional hour)	\$140.00 (First ½ hour) \$70.00 (per additional 15 minutes) plus \$50.00 Premises Visit Charge
- Non-Routine Installation	ICB	ICB			ICB
- Missed Appointment Charge	\$250.00	\$750.00			

# Cbeyond Tariff Rate Comparison – Non-Operating States

Service	Arizona Rate	Florida Rate	Massachusetts Rate	Minnesota Rate	New York Rate	Texas Rate
Business Local Exchange Service						
- Flat Rate Service MRC	\$45.00	\$45.00	\$13.00	\$45.00	\$25.00	\$45.00
- Flat Rate Service NRC	\$100.00	\$75.00	\$75.00	\$100.00	\$75.00	\$100.00
Business Trunk Line Service						
- Per line, MRC	\$60.00	\$60.00	\$80.00	\$60.00	\$35.00	\$60.00
- Per line, NRC	\$100.00	\$75.00	\$75.00	\$100.00	\$75.00	\$100.00
- Hunting, Service, per line	\$15.00	\$15.00	\$15.00	\$15.00	\$15.00	\$15.00
- Hunting Maintenance, per event	\$20.00		—	\$20.00	—	\$20.00
DID Installation						
- Per 10 numbers	\$915.00	\$915.00	\$915.00	\$915.00	\$915.00	\$915.00
- MRC	\$5.00	\$2.00	\$2.00	\$5.00	\$2.00	\$5.00
- Per additional 10 numbers	\$20.00	\$15.00	\$15.00	\$20.00	\$15.00	\$20.00
- MRC	\$5.00	\$2.00	\$2.00	\$5.00	\$2.00	\$5.00
DID Trunk Termination Installation						
- NRC	\$75.00	\$75.00	\$75.00	\$75.00	\$75.00	\$75.00
- MRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Directory Assistance						
- First 3 calls	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
- Per each additional call	\$1.00	\$0.85	\$0.85	\$0.85	\$0.85	\$0.85
Directory						

Service	Arizona Rate	Florida Rate	Massachusetts Rate	Minnesota Rate	New York Rate	Texas Rate
Assistance Call Completion Service						
- Per Call Completion	\$0.85	\$0.85	\$0.85	\$0.85	\$0.85	\$0.85
Operator Services						
- Station-to- Station Collect, Per Call	\$0.50	\$2.20	\$2.20	\$0.50	\$2.20	\$0.50
- Station-to- Station Collect, Per Minute	\$0.25	\$0.25	\$0.25	\$0.25	\$0.25	\$0.25
- Person-to- Person, Per Call	\$0.50	\$4.85	\$4.85	\$0.50	\$4.85	\$0.50
- Person-to- Person, Per Minute	\$0.25	\$0.25	\$0.25	\$0.25	\$0.25	\$0.25
Calling Card Service, Per Call	\$0.50	\$0.90	\$0.90	\$0.50	\$0.90	\$0.50
Operator-Dialed Surcharge	\$0.50	\$1.00	\$1.00	\$0.50	\$1.00	\$0.50
BLV, Per Call	\$2.00	\$6.45	\$6.45	\$2.00	\$6.45	\$2.00
Emergency Interrupt, Per Call (requires BLV)	\$0.50	\$6.45	\$6.45	\$0.50	\$6.45	\$0.50
Directory Listings						
- First Listing	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
- Per Additional Information Listing, per listing, MRC	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
- Per Additional Information Listing, per listing, NRC	\$20.00	\$10.00	\$10.00	\$20.00	\$10.00	\$20.00
Existing listing Change, per	\$20.00		---	\$20.00	---	\$20.00

Service	Arizona Rate	Florida Rate	Massachusetts Rate	Minnesota Rate	New York Rate	Texas Rate
listing						
Directories						
White Pages Directory per customer, per year	\$0.00	\$0.00	—	\$0.00	\$0.00	\$0.00
Caller ID Number						
- MRC	\$7.00	\$7.00	\$7.00	\$7.00	\$7.00	\$7.00
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Caller ID with Name and Number						
- MRC	\$10.00	—	\$10.00	\$10.00	—	\$10.00
- NRC	\$10.00	—	\$10.00	\$10.00	—	\$10.00
Call Forwarding No Answer						
- MRC	\$3.00	\$3.00	—	\$3.00	\$3.00	\$3.00
- NRC	\$10.00	\$10.00	—	\$10.00	\$10.00	\$10.00
Call Forwarding Busy						
- MRC	\$3.00	\$3.00		\$3.00	\$3.00	\$3.00
- NRC	\$10.00	\$10.00		\$10.00	\$10.00	\$10.00
Call Forwarding Universal						
- MRC	\$3.00	—	\$3.00	\$3.00	\$3.00	\$3.00
- NRC	\$10.00	—	\$10.00	\$10.00	\$10.00	\$10.00
Call Waiting/Cancel						
Call Waiting						
- MRC	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50	\$3.50
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Call Transfer						
- MRC	\$3.75	\$3.75	\$3.75	\$3.75	\$3.75	\$3.75
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Three-Way Calling						
- MRC	\$3.75	\$3.75	\$3.75	\$3.75	\$3.75	\$3.75
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00

Service	Arizona Rate	Florida Rate	Massachusetts Rate	Minnesota Rate	New York Rate	Texas Rate
Last Number Redial						
- MRC	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Speed Calling						
- MRC (30 code)	\$4.00	\$4.00	\$4.00	\$4.00	\$4.00	\$4.00
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Call Park						
- MRC	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Distinctive Ring						
- MRC	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Calling Number Delivery Block						
- MRC	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Anonymous Call Rejection						
- MRC	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Automatic Busy Redial						
- MRC	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
- Charge Per Use	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Automatic Call Return						
- MRC	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00	\$3.00
- Charge Per Use	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75	\$0.75
- NRC	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Call Blocking/Toll Restriction						
- 900/976 (MRC)	\$0.00	\$1.00	\$0.00	\$0.00	\$1.00	\$0.00
- 1+ Long Distance	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00

Service	Arizona Rate	Florida Rate	Massachusetts Rate	Minnesota Rate	New York Rate	Texas Rate
Blocking (MRC)						
- Directory Service Blocking (MRC)	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00
- Operator Service Blocking (MRC)	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00
- International Call Blocking (MRC)	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00
3 <sup>rd</sup> Party/Collect Call Blocking (MRC)	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00
Local Number Portability						
- Per line (MRC)	\$0.35	\$0.24	\$0.24	\$0.35	\$0.24	\$0.35
- Per PBX trunk (MRC)	\$3.15	\$2.16	\$2.16	\$3.15	\$2.16	\$3.15
Remote Call Forwarding						
- MRC	\$50.00	—	—	—	—	—
- NRC	\$50.00	—	—	—	—	—
Miscellaneous Charges						
- Order Charge	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00	\$50.00
- Telephone Number Change	\$50.00	\$25.00	\$25.00	\$50.00	—	\$50.00
- Bad Check Charge	\$25.00	\$20.00	\$20.00	\$25.00	\$20.00	\$25.00
- Reconnection, per line	ICB	\$50.00	\$50.00	\$50.00	\$50.00	ICB
- Expedite Charge	ICB	—	—	—	—	ICB
- Service Premise Visit, per hour	\$150.00	—	—	\$100.00	—	\$100.00
- Non-Routine Installation	ICB	—	—	\$100.00 (per additional line)	—	ICB
- Missed	\$250.00	—	—	\$100.00	—	\$100.00

Service	Arizona Rate	Florida Rate	Massachusetts Rate	Minnesota Rate	New York Rate	Texas Rate
Appointment Charge						

CBeyond COMMUNICATIONS, LLC'S  
RESPONSES TO STAFF'S FIRST SET OF DATA REQUESTS  
DOCKET NO. T-20497A-06-0802  
March 19, 2007

- 1-7. Please indicate why you believe that your range of rates is just and reasonable using a fair value or cost basis. Please include economic justification or cost support data. Please include any supporting materials.

RESPONSE:

Cbeyond's proposed rates are similar to those it currently charges for the same services in other jurisdictions within which it operates. Additionally, Cbeyond's rates are in line with the range of rates for similar services previously filed by other carriers operating within the State of Arizona, as outlined in the attached *Exhibit C*. Further, Cbeyond is a competitive carrier in a market where consumer choice is paramount. As such, if Cbeyond rates exceed what the market is willing to bear, consumers will not provision the Company's services and utilize a different carrier.

ROSHKA DEWULF & PATTEN

ROSHKA DEWULF & PATTEN, PLC  
ATTORNEYS AT LAW  
ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET  
SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

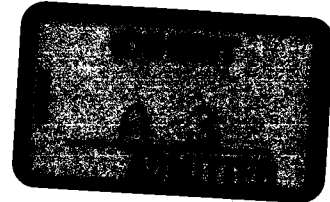
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AZ CORP COMMISSION  
DOCUMENT CONTROL

March 23, 2007

Ms. Candrea Allen  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007



RE: Cbeyond Communications - Docket No. T-20497A-06-0802

Dear Ms. Allen:

Enclosed as a supplement to Cbeyond's response to Staff Request No. 1-5, please find excerpts from Cbeyond, Inc.'s 10K, which includes the audited financial information you requested.

If you have any questions, please let me know.

Sincerely,

Michael W. Patten

MWP:mi  
Enclosures  
cc: Docket Control

10-K 1 d10k.htm FORM 10-K FOR THE YEAR ENDED DECEMBER 31, 2006

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 10-K**

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☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2006

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission file number 000-51588

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**CBEYOND, INC.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

59-3636526  
(I.R.S. Employer  
Identification No.)

320 Interstate North Parkway, Suite 300  
Atlanta, Georgia  
(Address of principal executive offices)

30339  
(Zip Code)

Registrant's telephone number, including area code: (678) 424-2400

Securities registered pursuant to 12(b) of the Act:  
Common Stock, \$0.01 par value  
(Title of Class)

---

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. (see definition of "accelerated filer" and "large accelerated filer" in Rule 12b-2 of the Exchange Act).

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**Table of Contents****Item 8. Financial Statements and Supplementary Data****REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM  
ON INTERNAL CONTROL OVER FINANCIAL REPORTING**

The Board of Directors and Stockholders  
Cbeyond, Inc. and Subsidiaries

We have audited management's assessment, included in the accompanying Management's Annual Report On Internal Control Over Financial Reporting, that Cbeyond, Inc. and Subsidiaries maintained effective internal control over financial reporting as of December 31, 2006, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Cbeyond, Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, management's assessment that Cbeyond, Inc. and Subsidiaries maintained effective internal control over financial reporting as of December 31, 2006, is fairly stated, in all material respects, based on the COSO criteria. Also, in our opinion, Cbeyond, Inc. and Subsidiaries maintained, in all material respects, effective internal control over financial reporting as of December 31, 2006, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Cbeyond, Inc. and Subsidiaries as of December 31, 2005 and 2006 and the related consolidated statements of operations, stockholders' equity (deficit) and cash flows for each of the three years in the period ended December 31, 2006 of Cbeyond, Inc. and Subsidiaries and our report dated March 15, 2007 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

Atlanta, Georgia  
March 15, 2007

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Table of Contents**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM  
ON THE CONSOLIDATED FINANCIAL STATEMENTS**

The Board of Directors and Stockholders  
Cbeyond, Inc. and Subsidiaries

We have audited the accompanying consolidated balance sheets of Cbeyond, Inc. and Subsidiaries (the "Company") as of December 31, 2005 and 2006, and the related consolidated statements of operations, stockholders' equity (deficit) and cash flows for each of the three years in the period ended December 31, 2006. Our audits also included the financial statement schedule listed in the Index at Item 15(a). These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of the Company at December 31, 2005 and 2006, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 2006, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

As discussed in Note 2 and Note 8 to the consolidated financial statements, effective January 1, 2006, the Company adopted the provisions of Statement of Financial Accounting Standards No. 123(R), *Share-Based Payments*.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of the Company's internal control over financial reporting as of December 31, 2006, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 15, 2007 expressed an unqualified opinion therein.

/s/ ERNST & YOUNG LLP

Atlanta, Georgia  
March 15, 2007

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**CBEYOND, INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
(Amounts in thousands, except per share amounts)

	<u>December 31</u>	
	<u>2005</u>	<u>2006</u>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 27,752	\$ 34,113
Marketable securities	10,170	9,995
Accounts receivable from customers, net of allowance for doubtful accounts of \$1,811 and \$2,586 as of December 31, 2005 and 2006, respectively	10,688	18,595
Prepaid expenses	3,395	4,046
Inventory	—	811
Other current assets	933	968
Total current assets	<u>52,938</u>	<u>68,528</u>
Property and equipment, net	57,068	72,790
Restricted cash equivalents and marketable securities	1,637	1,020
Other non-current assets	3,189	2,055
Total assets	<u>\$ 114,832</u>	<u>\$ 144,393</u>
<b>Liabilities and stockholders' equity</b>		
Current liabilities:		
Accounts payable	\$ 9,364	\$ 7,538
Accrued telecommunication costs	9,445	14,644
Deferred customer revenue	3,447	7,260
Other accrued liabilities	17,097	23,085
Current portion of capital lease obligations	382	98
Total current liabilities	<u>39,735</u>	<u>52,625</u>
Other non-current liabilities	511	660
Stockholders' equity:		
Common stock, \$0.01 par value; 50,000 shares authorized at December 31, 2005 and 2006; 26,560 and 27,419 shares issued and outstanding at December 31, 2005 and 2006, respectively	266	274
Preferred stock, \$0.01 par value; 15,000 shares authorized at December 31, 2005 and 2006; no shares issued and outstanding at December 31, 2005 and 2006	—	—
Deferred stock compensation	(701)	(22)
Additional paid-in capital	230,797	238,852
Accumulated deficit	<u>(155,776)</u>	<u>(147,996)</u>
Total stockholders' equity	<u>74,586</u>	<u>91,108</u>
Total liabilities and stockholders' equity	<u>\$ 114,832</u>	<u>\$ 144,393</u>

See accompanying notes.

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**CBEYOND, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(Amounts in thousands, except per share data)

	Year ended December 31		
	2004	2005	2006
Revenue			
Customer revenue	\$108,863	\$154,883	\$208,574
Terminating access revenue	4,448	4,214	5,312
Total revenue	<u>113,311</u>	<u>159,097</u>	<u>213,886</u>
Operating expenses:			
Cost of service (exclusive of depreciation and amortization of \$17,611, \$20,038, and \$21,463 respectively, shown separately below)	31,725	47,161	64,294
Selling, general and administrative (exclusive of depreciation and amortization of \$5,036, \$4,122, and \$5,733 respectively, shown separately below)	65,159	86,453	114,408
Public offering expenses	1,103	—	945
Depreciation and amortization	<u>22,647</u>	<u>24,160</u>	<u>27,196</u>
Total operating expenses	<u>120,634</u>	<u>157,774</u>	<u>206,843</u>
Operating income (loss )	(7,323)	1,323	7,043
Other income (expense):			
Interest income	637	1,325	1,919
Interest expense	(2,788)	(2,424)	(163)
Gain from write-off of carrying value of debt in excess of principal	—	4,060	—
Loss on disposal of property and equipment	(1,746)	(539)	(601)
Other income (expense), net	<u>(236)</u>	<u>(9)</u>	<u>12</u>
Income (loss) before income taxes	(11,456)	3,736	8,210
Income tax expense	—	—	(430)
Net income (loss)	(11,456)	3,736	7,780
Dividends accreted on preferred stock	(7,083)	(8,550)	—
Net income (loss) attributable to common stockholders	<u>\$ (18,539)</u>	<u>\$ (4,814)</u>	<u>\$ 7,780</u>
Net income (loss) attributable to common stockholders per common share:			
Basic	<u>\$ (143.71)</u>	<u>\$ (1.16)</u>	<u>\$ 0.29</u>
Diluted	<u>\$ (143.71)</u>	<u>\$ (1.16)</u>	<u>\$ 0.27</u>
Weighted average common shares outstanding:			
Basic	<u>129</u>	<u>4,159</u>	<u>26,951</u>
Diluted	<u>129</u>	<u>4,159</u>	<u>28,971</u>

See accompanying notes.

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**CBEYOND, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)**  
(Amounts in thousands)

	<u>Common Stock</u>		<u>Additional Paid-in Capital</u>	<u>Deferred Compensation</u>	<u>Accumulated Deficit</u>	<u>Total Stockholders' Equity (Deficit)</u>
	<u>Shares</u>	<u>Par Value</u>				
Balance at December 31, 2003	124	\$ 1	\$ 78,543	\$ (1,432)	\$ (132,423)	\$ (55,311)
Exercise of stock options	8	—	30	—	—	30
Issuance of stock options to employees	—	—	191	(191)	—	—
Issuance of stock options to non-employees for services	—	—	78	(78)	—	—
Deferred stock compensation expense	—	—	—	375	—	375
Forfeiture of options	—	—	(116)	116	—	—
Accretion of preferred dividends	—	—	—	—	(7,083)	(7,083)
Accretion of issuance costs	—	—	(128)	—	—	(128)
Net and comprehensive loss	—	—	—	—	(11,456)	(11,456)
Balance at December 31, 2004	132	1	78,598	(1,210)	(150,962)	(73,573)
Exercise of stock options	34	1	129	—	—	130
Issuance of stock options to non-employees for services	—	—	16	(16)	—	—
Deferred stock compensation expense	—	—	—	324	—	324
Forfeiture of options	—	—	(201)	201	—	—
Accretion of preferred dividends	—	—	—	—	(8,550)	(8,550)
Accretion of issuance costs	—	—	(149)	—	—	(149)
Issuance of common stock, net	6,848	69	64,961	—	—	65,030
Issuance of common stock upon conversion of Preferred stock	19,546	195	87,443	—	—	87,638
Net and comprehensive income	—	—	—	—	3,736	3,736
Balance at December 31, 2005	26,560	266	230,797	(701)	(155,776)	74,586
Exercise of stock options	854	8	4,084	—	—	4,092
Issuance of stock grant awards	5	—	106	—	—	106
Share-based compensation expense	—	—	4,227	22	—	4,249
Excess tax benefit from stock option exercises	—	—	290	—	—	290
Elimination of deferred stock compensation relating to employee options	—	—	(657)	657	—	—
Adjustment to offering costs	—	—	5	—	—	5
Net and comprehensive income	—	—	—	—	7,780	7,780
Balance at December 31, 2006	<u>27,419</u>	<u>\$274</u>	<u>\$238,852</u>	<u>\$ (22)</u>	<u>\$ (147,996)</u>	<u>\$ 91,108</u>

See accompanying notes.

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**CBeyond, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Amounts in thousands)

	Year ended December 31		
	2004	2005	2006
<b>Operating activities</b>			
Net income (loss)	\$(11,456)	\$ 3,736	\$ 7,780
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation and amortization	22,647	24,160	27,196
Provision for doubtful accounts	2,393	3,468	3,629
Loss on disposal of property and equipment	1,746	539	601
Interest expense offset by reduction in carrying value in excess of principal	(2,281)	(1,618)	—
Write-down of marketable securities to fair value	235	—	—
Gain from write-off of carrying value of debt in excess of principal	—	(4,060)	—
Non-cash share-based compensation	362	286	4,355
Excess tax benefit relating to share-based payments	—	—	(290)
Issuance of stock options to vendors for services	13	38	—
Changes in operating assets and liabilities:			
Accounts receivable	(3,574)	(8,800)	(11,536)
Inventory	—	—	(811)
Prepaid expenses and other current assets	(603)	(1,861)	(603)
Other assets	516	(2,454)	1,242
Accounts payable	(446)	4,037	(1,826)
Other accrued expenses	3,916	12,176	13,923
Net cash provided by operating activities	<u>13,468</u>	<u>29,647</u>	<u>43,660</u>

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**CBEYOND, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS—(CONTINUED)**  
(Amounts in thousands)

	Year ended December 31		
	2004	2005	2006
<b>Investing activities</b>			
Purchases of property and equipment	(9,783)	(21,329)	(42,092)
Decrease (increase) from restricted cash equivalents and marketable securities	61	(875)	617
Purchases of marketable securities	(11,790)	(10,556)	(65,929)
Redemption of marketable securities	18,000	15,287	66,104
Proceeds from disposal of fixed assets	—	—	6
Net cash used in investing activities	<u>(3,512)</u>	<u>(17,473)</u>	<u>(41,294)</u>
<b>Financing activities</b>			
Proceeds from borrowings of long-term debt	1,003	741	—
Repayment of long-term debt and capital leases	(9,861)	(73,014)	(284)
Proceeds from issuance of stock, net of issuance cost	16,917	65,006	—
Excess tax benefit relating to share-based payments	—	—	290
Proceeds from exercise of stock options	30	130	4,092
Equity issuance costs	—	—	5
Financing issuance costs	(312)	(145)	(108)
Net cash provided by (used in) financing activities	<u>7,777</u>	<u>(7,282)</u>	<u>3,995</u>
Net increase in cash and cash equivalents	17,733	4,892	6,361
Cash and cash equivalents at beginning of period	5,127	22,860	27,752
Cash and cash equivalents at end of period	<u>\$ 22,860</u>	<u>\$ 27,752</u>	<u>\$ 34,113</u>
<b>Supplemental disclosure</b>			
Interest paid	\$ 5,070	\$ 4,026	\$ 119
Income taxes paid	\$ —	\$ —	\$ 224
Non-cash purchases of property and equipment	\$ 13,958	\$ 8,437	\$ 1,775

See accompanying notes.

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**CBeyond, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**December 31, 2006**  
**(Amounts in thousands, except per share amounts)**

**1. Description of Business**

Cbeyond, Inc., a managed service provider, was incorporated on March 28, 2000 in Delaware, for the purpose of providing integrated packages of voice, mobile and broadband data services to small businesses in major metropolitan areas across the United States. As of December 31, 2006, these services were provided in the metropolitan Atlanta, Dallas, Denver, Houston, Chicago and Los Angeles areas, and as of January 2007, San Diego.

**2. Summary of Significant Accounting Policies***Principles of Consolidation*

The consolidated financial statements include the accounts of Cbeyond, Inc. and its wholly-owned subsidiaries (collectively, the "Company"). All intercompany balances and transactions have been eliminated in the consolidation process.

*Use of Estimates*

The preparation of financial statements in conformity with U.S. generally accepted accounting principles (GAAP) requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results will differ from those estimates.

*Revenue Recognition*

Revenues are recognized when the services are delivered and earned. Revenue derived from local voice and data services is billed monthly in advance and deferred until earned. Revenues derived from other telecommunications services, including long distance, excess charges over monthly rate plans and terminating access fees from other carriers, are recognized monthly as services are provided and billed in arrears.

Revenue derived from customer installation is deferred and amortized over the average estimated customer life of three years on a straight-line basis. Related installation costs are deferred only to the extent that revenue is deferred and are amortized on a straight-line basis in proportion to revenue recognized. Mobile handset revenue is recognized at the time of shipment. Contractual termination fees are billed to the customer, but revenue from these fees is not recognized until payment is received.

The Company's marketing promotions include various rebates and customer reimbursements that fall under the scope of Emerging Issues Task Force (EITF) Issue No. 00-22, *Accounting for "Points" and Certain Other Time-Based or Volume-Based Sales Incentive Offers, and Offers for Free Products or Services to be Delivered in the Future*, and EITF Issue No. 01-09, *Accounting for Consideration Given by a Vendor to a Customer*. In accordance with these pronouncements, the Company records any promotion as a reduction in revenue when earned by the customer. For promotions earned over time, the Company ratably allocates the cost of honoring the promotion over the underlying promotion period as a reduction in revenue. EITF 01-09 additionally requires that measurement of the obligation should be based on the estimated number of customers that will ultimately earn and claim the promotion. Prior to 2005, sufficient historical information did not exist to reasonably estimate the amount of the obligation that would ultimately be earned and claimed. Accordingly, the Company recorded the full liability. During 2005, the Company had accumulated sufficient historical experience to reasonably estimate this amount for certain of its promotions and recognized approximately \$336 as the initial change in estimate for

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## CBEYOND, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

these promotions. During 2006, the Company gained sufficient historical experience to begin estimating this amount for the remaining promotions for which enough history did not exist in 2005 and recognized approximately \$776 as the initial change in estimate for these promotions.

*Allowance for Doubtful Accounts*

The allowance for doubtful accounts is established based upon the amount the Company ultimately expects to collect from customers, and is estimated based on a number of factors, including a specific customer's ability to meet its financial obligations to the Company, as well as general factors, such as length of time the receivables are past due, historical collection experience and the general economic environment. Customer accounts are written off against the allowance upon disconnection of the customers' service, at which time the accounts are deemed to be uncollectible. Generally, customer accounts are considered delinquent and the service disconnection process begins when they are sixty days in arrears. The Company recognized \$2,393, \$3,468 and \$3,629 relating to bad debts during 2004, 2005 and 2006, respectively.

*Cash and Cash Equivalents*

Cash and cash equivalents include all U.S. government backed highly liquid investments with original maturities of three months or less at the date of purchase. The carrying amount of cash and cash equivalents approximates fair value.

*Restricted Cash Equivalents and Marketable Securities*

Restricted cash equivalents and marketable securities consist of certificates of deposit held as collateral for letters of credit issued on behalf of the Company. Some vendors providing services to the Company require letters of credit to be redeemed in the event the Company cannot meet its obligations to the vendor. These letters of credit are issued to the Company's vendors, and in return, the Company is required to maintain cash or cash equivalents on hand with the bank at a dollar amount equal to the letters of credits outstanding, the majority of which is maintained in certificates of deposit, with the remainder in a restricted cash account with a commercial bank. In the event market conditions change and the letters of credit outstanding increase beyond the level of cash on hand at a commercial bank, the Company will be required to provide additional capital. The Company's collateral requirements (restricted cash) were \$1,637 and \$1,020 as of December 31, 2005 and 2006, respectively.

*Marketable Securities*

Marketable securities consist of commercial paper and are classified as investments available for sale. The Company's investments available for sale are carried at fair value or at cost, which approximates fair value. The Company considered the unrealized losses at December 31, 2004 to be other than temporary because the underlying securities held by the mutual fund were interest rate sensitive and unlikely to recover their value in the near future. Further, during 2005 the Company liquidated its mutual fund holdings and realized all losses on the investment. The Company recorded losses of \$235 in 2004 and \$13 in 2005 to adjust the cost basis of its investments to fair value.

The adjusted cost bases, which equal fair value, are as follows:

	December 31	
	2005	2006
Commercial Paper	\$10,170	\$9,995
Total Marketable Securities	<u>\$10,170</u>	<u>\$9,995</u>

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**Table of Contents****CBEYOND, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

As of December 31, 2005, the Company held debt securities consisting of commercial paper maturing in January 2006. As of December 31, 2006, the Company held debt securities consisting of commercial paper maturing in January 2007.

*Inventories*

The Company states its inventories at the lower of cost or market. Inventories consist primarily of mobile devices and are stated using the first-in, first-out (FIFO) method. Shipping and handling costs incurred in conjunction with the sale of inventory are included as an element of cost of service.

*Property and Equipment*

Property and equipment is stated at cost and depreciated over estimated useful lives using the straight-line method. Leasehold improvements are amortized over the shorter of the life of the lease or the duration of their economic value to the Company. Repair and maintenance costs are expensed as incurred. The Company pays certain equipment maintenance costs in advance under multi-year maintenance contracts, which are included in current and non-current assets. The amortization of these long-term prepaid expenses account for the decline in other non-current assets between 2005 and 2006.

Network engineering costs incurred during the construction phase of the Company's networks are capitalized as part of property and equipment and recorded as construction-in progress until the projects are completed and placed into service.

The Company capitalizes internal-use software in accordance with Statement of Position 98-1, *Accounting for the Costs of Computer Software Developed or Obtained for Internal Use* (SOP 98-1). For the years ended December 31, 2005 and 2006, the Company capitalized \$2,284 and \$4,107, respectively, associated with these development efforts. These costs are amortized to expense generally over a period of three years depending on the useful life of the related asset.

*Income Taxes*

The Company accounts for income taxes in accordance with Statement of Financial Accounting Standard No. 109, *Accounting for Income Taxes* (SFAS 109), which requires companies to recognize deferred income tax assets and liabilities for temporary differences between the financial reporting and tax bases of recorded assets and liabilities and the expected benefits of net operating loss and credit carryforwards. SFAS 109 requires that deferred income tax assets be reduced by a valuation allowance if it is more likely than not that some portion or all of the deferred income tax assets will not be realized. The Company evaluates the realizability of its deferred income tax assets, primarily resulting from net operating loss carryforwards, and adjusts its valuation allowance, if necessary.

The Company is currently using Regular and Alternative Minimum Tax (AMT) net operating losses to offset taxable income expected to be generated for the year. The Company has performed a study and determined that there is no limitation on the Company's ability to utilize net operating loss carryforwards under Internal Revenue Code Section 382 due to changes in ownership occurring through September 13, 2006. Subsequent to this study, the Company facilitated a secondary offering of its common stock in October 2006. The effects of this offering and any other transactions subsequent to September 13, 2006 have not been evaluated as to their impact on the Company's ability to utilize net operating loss carryforwards.

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**CBEYOND, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

Beginning in 2007, the Company's operations in Dallas and Houston, Texas will be subject to a new state income tax, referred to as the Texas margin tax. This tax will substantially increase our state income tax liability. Had this new tax been in effect in 2006, the Company's state income tax expense would have increased by approximately \$500.

*Impairment and Other Losses on Long-Lived Assets*

The Company evaluates impairment losses on long-lived assets used in operations when events and circumstances indicate that the assets might be impaired. If the Company's review indicates that the carrying value of an asset will not be recoverable, based on a comparison of the carrying value of the asset to the undiscounted cash flows when possible, the impairment will be measured by comparing the carrying value of the asset to the fair value. Fair value will be determined based on quoted market values, discounted cash flows or appraisals. The Company's review will be at the lowest levels for which there are identifiable cash flows that are largely independent of the cash flows of other business units.

During 2004 and 2006, the Company replaced certain categories of network equipment with newer equipment having greater functionality in order to improve network efficiency and performance. The equipment being replaced had no further use in the network, and the replacement of this class of assets comprised a substantial portion of the loss on disposal of fixed assets. The Company also wrote off certain software assets that we replaced due to obsolescence or upgrade. During the normal course of operations, the Company also writes equipment off that it is not able to recover from former customers. This equipment resides at customer locations to enable connection to the Company's telecommunications network. The gross value of equipment written off during 2004, 2005 and 2006 was \$3,073, \$641 and \$3,352, respectively.

*Marketing Costs*

The Company expenses marketing costs, including advertising, in support of its sales efforts as these costs are incurred. Such costs amounted to approximately \$1,021, \$1,819 and \$2,185 during 2004, 2005 and 2006, respectively.

*Deferred Financing Costs*

During 2004 and 2005, respectively, the Company recorded \$312 and \$42 of deferred costs associated with amendments to its credit facility with Cisco Systems Capital Corporation (Cisco Capital). Of these costs, approximately \$38 and \$50 were amortized to interest expense in 2004 and 2005, respectively. Upon the payoff of the Cisco Capital facility in November 2005, the net remaining deferred financing costs were written off as a reduction of the gain recognized upon the payoff of the related debt (see Note 6).

The Company has incurred a total of \$256 of loan costs in connection with obtaining a five year line of credit facility commitment from Bank of America that was finalized in 2006 (the "line of credit"). In accordance with the Company's policy, deferred loan costs are amortized from the effective date of the agreement or amendment over the then remaining life of the facility, which resulted in approximately \$45 of amortization to interest expense in 2006.

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**Table of Contents****CBEYOND, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)***Concentrations of Risk*

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist of trade accounts receivable, which are unsecured. The Company's risk is limited due to the fact that there is no significant concentration with one customer or group of customers. Because the Company's operations were conducted in Atlanta, Georgia; Dallas, Texas; Houston, Texas; Denver, Colorado; Chicago, Illinois; and Los Angeles, California through 2006 and, additionally, San Diego, California beginning in 2007, its revenues and receivables were geographically concentrated in these cities.

*Fair Value*

The Company has used the following methods and assumptions in estimating its fair value disclosures for financial instruments:

- The carrying amounts reflected in the consolidated balance sheets for cash and cash equivalents, restricted cash and cash equivalents, marketable securities and accounts receivable equals or approximates their respective fair values.
- The carrying amounts reported in the consolidated balance sheets for capital leases approximate fair value due to the use of imputed interest rates based on the variable interest rates of the Company's prior debt.

*Share-Based Compensation*

Prior to January 1, 2006, the Company accounted for share-based compensation under the recognition and measurement provisions of APB Opinion No. 25, *Accounting for Stock Issued to Employees* (APB 25), and related interpretations, as permitted by Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation* (SFAS 123). Under this guidance, the Company recognized non-cash compensation expense for stock options by measuring the excess, if any, of the estimated fair value of the common stock at the date of grant over the amount an employee must pay to acquire the stock and amortizing that excess on a straight-line basis over the vesting period of the applicable stock options. Additional paid-in capital and deferred compensation were recorded at the date of the grants to reflect the intrinsic value of the awards. Under APB 25, the deferred compensation was amortized to expense over the vesting periods on a straight line basis, with adjustments for forfeitures as they occurred.

Effective January 1, 2006, the Company adopted the fair value recognition provisions of Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment* (SFAS 123(R)) using the modified prospective transition method. Under that transition method, compensation cost recognized on or after January 1, 2006 includes: (a) compensation cost for all share-based payments granted prior to, but not yet vested as of January 1, 2006, based on the grant date fair value estimated in accordance with the original provisions of SFAS 123, and (b) compensation cost for all share-based payments granted on or after January 1, 2006, based on the grant date fair value estimated in accordance with SFAS 123(R). Results for prior periods have not been restated. Under SFAS 123(R), compensation is recorded over the vesting period directly to paid-in capital. Thus, upon adoption, the Company eliminated the deferred compensation balance relating to employee stock options with an offsetting reduction to additional paid-in capital.

The following pro forma information shows the effect on the Company's statement of operations as if the Company had accounted for its employee stock options under the fair value method of SFAS 123 in these earlier periods. The Company's pro forma expense calculations under FAS 123 considered estimated forfeitures as of

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**CBEYOND, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

the date of grant and, accordingly, are considered to reasonably approximate the expense that would have been recorded had the expense been calculated under FAS 123(R).

	<u>Year Ended December 31,</u>	
	<u>2004</u>	<u>2005</u>
Net loss attributable to common stockholders	\$ (18,539)	\$ (4,814)
Add: Share-based compensation expense determined under the intrinsic value based method	362	286
Deduct: Share-based compensation expense determined under the fair value based method	(1,880)	(2,716)
Pro forma net loss attributable to common stockholders	\$ (20,057)	\$ (7,244)
Net loss attributable to common stockholders per common share:		
Basic and diluted—as reported	\$ (143.71)	\$ (1.16)
Basic and diluted—pro forma	\$ (155.48)	\$ (1.74)

*Basic and Diluted Net Income (Loss) Attributable to Common Stockholders per Common Share*

Basic net income (loss) attributable to common stockholders per common share excludes dilution for potential common stock issuances and is computed by dividing net income (loss) attributable to common stockholders by the weighted-average common shares outstanding for the period. As the Company reported a net loss attributable to common stockholders for the years ended 2004 and 2005, the conversion of Preferred Stock and the exercise of stock options and warrants were not considered in the computation of diluted net loss attributable to common stockholders per common share because their effect is anti-dilutive.

For the year ended December 31, 2006, the Company reported net income, and accordingly considered the dilutive effect of stock options outstanding during the period. For purposes of the calculation of diluted earnings per share for the year ended December 31, 2006, an additional 2,020 shares were added to the denominator because they were dilutive for the period. Weighted average shares issuable upon the exercise of stock options that were not included in the calculation of diluted earnings per share were 203 for the year ended December 31, 2006. Such shares were not included because they were anti-dilutive.

*Reclassifications*

Reclassifications have been made to the December 31, 2005 balance sheet to provide further breakout of accrued liabilities and to aggregate certain non-current assets and liabilities on the face of the balance sheet. In addition, certain amounts have been reclassified among the accrued liability accounts disclosed in Note 4.

*Recent Accounting Pronouncements*

In May 2005, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standard No. 154, *Accounting Changes and Error Corrections—A Replacement of APB Opinion No. 20 and FASB Statement No. 3* (SFAS 154). The FASB issued SFAS 154 to provide guidance on the accounting for and reporting of error corrections. Unless otherwise impracticable, it establishes retrospective application as the required method for reporting a change in accounting principle in the absence of explicit transition requirements specific to the newly adopted accounting principle. SFAS 154 also provides guidance for determining whether retrospective application is impracticable and for reporting an accounting change when retrospective application is impracticable. Furthermore, this statement addresses the reporting of a correction of an error in previously issued financial statements by restating previously issued financial statements. SFAS 154 is effective for financial statements for fiscal years beginning after December 15, 2005. The Company has adopted SFAS 154 effective January 1, 2006, and the adoption of this statement did not have an impact on its consolidated financial statements.

Table of Contents**CBEYOND, INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

In July 2006, the FASB issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes—An Interpretation of FASB Statement No. 109* (FIN 48). FIN 48 prescribes a recognition threshold and measurement attribute for financial statement recognition and measurement of a tax positions taken or expected to be taken in a tax return. In addition, it provides guidance on the measurement, derecognition, classification and disclosure of tax positions, as well as the accounting for related interest and penalties. FIN 48 is effective for fiscal years beginning after December 15, 2006. The Company is evaluating the effect of FIN 48 on its Financial Statements and has not determined the impact that the adoption will have on its results of operations, cash flows and financial position.

In June 2006, the Emerging Issues Task Force issued EITF Issue No. 06-03, *How Taxes Collected from Customers and Remitted to Governmental Authorities Should Be Presented in the Income Statement (That Is, Gross versus Net Presentation)* (EITF 06-03). EITF 06-03 provides guidance regarding accounting for certain taxes assessed by a governmental authority that are imposed on and concurrent with specific revenue-producing transactions between a seller and a customer. These taxes and surcharges include, among others, universal service fund charges, sales, use, value added, and some excise taxes. The Company is currently evaluating the requirements of EITF 06-03 but does not believe the adoption will have a material effect on its consolidated financial statements.

In September 2006, the FASB issued Statement of Financial Accounting Standards No. 157, *Fair Value Measurement* (SFAS 157). This standard defines fair value, establishes a framework for measuring fair value in accounting principles generally accepted in the United States of America and expands disclosure about fair value measurements. This pronouncement applies to other accounting standards that require or permit fair value measurements. Accordingly, this statement does not require any new fair value measurement, but provides guidance on how to measure fair value by providing a fair value hierarchy used to classify the source of the information. This statement is effective for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years. The Company is currently evaluating the requirements of SFAS 157 and has not yet determined the impact that the adoption will have on its consolidated financial statements.

**3. Property and Equipment**

Property and equipment consist of:

	Useful Lives (In years)	Year Ended December 31,	
		2005	2006
Network and lab equipment	2-7	\$101,172	\$ 127,842
Leasehold improvements	3-10	4,461	7,057
Computers and software	2-5	32,119	39,448
Furniture and fixtures	7	2,382	2,915
Construction-in progress		2,839	4,676
		142,973	181,938
Less accumulated depreciation and amortization		(85,905)	(109,148)
Property and equipment, net		<u>\$ 57,068</u>	<u>\$ 72,790</u>

The amount depreciated under the capital lease was \$326 during both 2005 and 2006.

Any future debt outstanding under the Company's line of credit with Bank of America will be collateralized by a pledge of substantially all of the assets of the Company.

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**CBEYOND, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**4. Accrued Liabilities**

	December 31	
	2005	2006
Accrued bonus	\$ 4,058	\$ 4,907
Accrued other compensation and benefits	874	1,159
Accrued sales taxes	2,595	3,722
Accrued other taxes	3,570	4,329
Accrued professional fees	1,204	1,168
Deferred rent	2,135	4,916
Deferred installation revenue	654	750
Other accrued expenses	2,007	2,134
Total Other Accrued Liabilities	<u>\$17,097</u>	<u>\$23,085</u>

**5. Capitalization***Common Stock*

In conjunction with the initial public offering, Cbeyond's certificate of incorporation was amended to authorize 50,000 shares of common stock. In November 2005, Cbeyond issued 6,132 shares of common stock in an initial public offering for \$12.00 a share, and as more fully described below, issued 19,546 shares of common stock as a result of the conversion of preferred shares, including accumulated dividends. The proceeds from the offering were \$65,006, net of underwriter commissions of \$4,941 and expenses of \$3,641. As of December 31, 2005, no shares were reserved for issuance under the Company's 2002 Stock Incentive Plan, and 2,110 shares were reserved for issuance under the Company's 2005 Stock Incentive Plan. Subsequent to the initial public offering and prior to December 31, 2005 all outstanding warrants were exercised in a cashless transaction resulting in the issuance of 716 common shares (see Note 6). Also in conjunction with the initial public offering, the Company effected a 1 for 3.88 reverse stock split. All share and per share amounts included in these financial statements and footnotes have been adjusted to reflect this split as if it were in effect for all periods presented. As of December 31, 2006, no shares were reserved for issuance under the Company's 2002 Stock Incentive Plan, and 1,259 shares were reserved for issuance under the Company's 2005 Stock Incentive Plan.

*Preferred Stock*

In November 2002, in connection with a corporate reorganization and pursuant to a stock purchase agreement, Cbeyond issued 12,398 shares of Series B preferred stock (Series B) for \$3.88 per share; including 753 shares issued in conjunction with the cancellation of debt (see Note 6). In December 2004, Cbeyond amended its certificate of incorporation to authorize 15,206 shares of Series B and 1,546 shares of Series C preferred stock (Series C) and, pursuant to a stock purchase agreement with substantially all of the existing Series B preferred stockholders and certain other investors, Cbeyond issued 1,437 shares of Series C for \$11.83 per share. Additionally, the Company issued 9 shares of Series B to an existing Series B preferred stockholder at \$3.88 per share under the stockholders' prior stock purchase agreement.

Each share of the Series B and Series C (collectively, the "Preferred Stock") was convertible initially into one share of the Company's common stock. The conversion price per share of common stock was equal to the original price paid per share of Preferred Stock. All of the shares of Preferred Stock would automatically convert to common stock in the event of a public offering of the Company's common stock meeting certain conditions, subject to adjustment for dilutive events. In November 2005, The Company completed such a public offering. Accordingly, 12,407 and 1,570 issued and outstanding shares of Series B and Series C, respectively, were converted into common stock at the time of the transaction. The cumulative unpaid dividends of Series B and Series C were converted into 5,413 and 156 shares of common stock, respectively.

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**CBEYOND, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

The Preferred Stock was redeemable through the exercise of a put option upon the vote of a majority of the holders of the Preferred Stock beginning November 1, 2007 if there had not been either a sale of the Company or a qualified initial public offering of its common stock. If the put option was exercised, the repurchase price would have been the greater of (a) the Liquidation Value or (b) the fair market value per share of the Company as determined by provisions outlined in the Second Amended and Restated Shareholder Agreement. The Company classified its Preferred Stock outside of equity in accordance with EITF Topic D-98, *Classification and Measurement of Redeemable Securities* (Topic D-98), because the redemption provisions of the put option were not solely within the control of the Company, without regard to the probability of whether the redemption requirements would ever be triggered.

Topic D-98 establishes that the initial carrying value of the Preferred Stock should be the fair value at the date of issuance. Topic D-98 further provides that if the Preferred Stock is not redeemable currently and that it is not probable that the security will become redeemable, then subsequent adjustments to redemption value are not necessary until it is probable that the Preferred Stock will become redeemable. Accordingly, since inception, the Company determined that it is not probable that a qualified initial public offering of its stock would not be achieved before November 1, 2007. In making this determination, the Company assessed the likelihood of redemption based on the Preferred Stock redemption provisions and the specific facts and circumstances at each reporting period. The Company's business plan since inception was to expand into numerous major metropolitan markets replicating a similar operating model. Successful execution of this business model was predicated on obtaining significant funds through a public offering of its common stock within a reasonable period of time after inception.

The Preferred Stock accumulated dividends at an annual rate of 12% compounded daily on the Preferred Stock's liquidation value. The liquidation value of the Preferred Stock was equal to the original price paid per share of Preferred Stock plus cumulative unpaid dividends. As provided for in the Company's amended and restated certificate of incorporation, accumulated dividends of \$22,845 accrued through the date of the public offering were paid in common stock in lieu of cash upon conversion of the Preferred Stock.

The holders of the Company's common stock and Preferred Stock voted as one class, with each share of Preferred Stock entitled to one vote for each share of common stock issuable upon conversion.

As of December 31, 2006, Cbeyond was authorized to issue up to 15,000 shares of Preferred Stock, of which there were no shares issued or outstanding.

The following table summarizes the Preferred Stock transactions during the period covered by these financial statements:

	<u>Series B</u>	<u>Series C</u>
Balance at December 31, 2003	\$ 54,835	\$ —
Issuance of preferred stock	35	16,882
Accretion of preferred dividends	7,072	11
Accretion of issuance costs	126	2
Balance at December 31, 2004	62,068	16,895
Adjustments to issuance costs	—	(24)
Accretion of preferred dividends	6,719	1,831
Accretion of issuance costs	107	42
Conversion to common stock	(68,894)	(18,744)
Balance at December 31, 2005 and 2006	<u>\$ —</u>	<u>\$ —</u>

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**CBEYOND, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**6. Debt**

At December 31, 2005 and 2006, there was no long-term debt outstanding, as a result of the Company using proceeds from its initial public offering of common stock to pay off and cancel its credit facility with Cisco Capital (the "Credit Facility").

On February 8, 2006, the Company entered into a credit agreement with Bank of America that provides for a secured revolving line of credit for up to \$25,000. The interest rates applicable to loans under the revolving line of credit are floating interest rates that, at the Company's option, will equal a LIBO rate or an alternate base rate plus, in each case, and applicable margin. The base rate is a fluctuating interest rate equal to the higher of (a) the prime rate of interest per annum publicly announced from time to time by Bank of America, as administrative agent, as its prime rate in effect at its principal office in New York City and (b) the overnight federal funds rate plus 0.50%. The interest periods of the Eurodollar loans shall be 1, 2, 3 or 6 months, at the Company's option. The applicable margins for LIBO rate loans are 2.25%, 2.50%, and 2.75% for loans drawn in aggregate up to \$8,300, between \$8,300 and \$16,600, and between \$16,600 and \$25,000, respectively. The applicable margins for alternate base rate loans are 0.75%, 1.00%, and 1.25% for loans drawn in aggregate up to \$8,300, between \$8,300 and \$16,600, and between \$16,600 and \$25,000, respectively. In addition, the Company is required to pay to Bank of America under the revolving line of credit a commitment fee for unused commitments at a per annum rate of 0.50%. The term of the facility is five years. In addition, the facility contains certain restrictive covenants, including restrictions on the payment of dividends.

The Company entered into the Credit Facility in 2001 to support the Company's entry into its first five markets. The Credit Facility was amended five times through March 2005 to accommodate new market expansions and changing economic conditions. After all amendments, the Credit Facility provided for borrowings of up to \$105,400 through December 31, 2005, payable in quarterly installments through March 31, 2010. The Credit Facility was secured by substantially all of the assets and equity of the Company and restricted the payment of dividends. Borrowings under the facility bore interest at either a variable rate of LIBOR plus a margin of between 3.5% and 5.5%, depending on the Company's leverage ratio, or at a fixed rate that ranged from 6.85% to 8.85% during the time the loan was outstanding. The majority of borrowings available under the Credit Facility were restricted to purchases of network equipment and services.

In connection with amendments to the Credit Facility in November 2002, the Company issued warrants to Cisco Capital to acquire up to 720 shares of the Company's common stock at an exercise price of approximately \$0.04 per share. The Company calculated a fair value for the warrants of \$2,215 using a binomial valuation model with the following assumptions: volatility factor of 97.9%, fair value of common stock of \$3.10, estimated life of the warrants of 7.4 years, and risk-free interest rate of 3.64%. These warrants, which were subject to vesting upon the occurrence of certain triggering events, became fully vested during 2005 and were exercised in 2005 subsequent to the initial public offering.

In addition, the Company amended the Credit Facility as part of a corporate reorganization in November 2002. In conjunction with this amendment, Cisco Capital cancelled \$25,000 of the amount outstanding in exchange for 753 shares of Series B (Debt Exchange). As a result of the significant discount on the value of the Company's debt cancelled in the Debt Exchange, the Company accounted for the exchange as a troubled debt restructuring in accordance with SFAS No. 15 and EITF Issue No. 02-4, *Determining whether Debtor's Modification or Exchange of Debt Instruments is within the Scope of FASB Statement No. 15*. Under SFAS No. 15, a gain is recognized to the extent that the carrying amount of the debt before the restructuring, net of unamortized discounts and loan costs and other consideration exchanged as partial settlement, exceeds future contractual payments (principal and interest combined) of the restructured debt. Based on this calculation, the Company recorded a gain of \$4,338 at the date of the restructuring. Projected future interest payments estimated

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based on the interest rate in effect at the date of the restructuring, approximately 7.3%, were considered carrying value in excess of principal. As interest was paid in subsequent periods, payments were applied against the carrying value, resulting in no interest expense after the date of restructuring, except to the extent actual interest rates exceeded the interest rate in effect at the date of restructuring, which occurred during 2004 and totaled approximately \$259 as an increase to interest expense. The effects of such fluctuations were recognized in the period the applicable interest rate changed, except that no gain was recorded until it could no longer be offset by future payments.

The table below illustrates the activity recognized from the date of the troubled debt restructuring through the final pay-off of the debt after the initial public offering.

Debt cancelled	\$25,000
Less:	
Value of preferred stock exchanged	(2,902)
Warrants issued with restructure	(2,215)
Unamortized debt discount	(3,636)
Unamortized deferred financing costs written off	(393)
Restructuring transaction costs	(264)
Carrying value in excess of principal at restructure	<u>15,590</u>
Gain on restructuring of debt	(4,338)
Interest payments recorded as a reduction of carrying value in 2002	<u>(449)</u>
Carrying value in excess of principal as of December 31, 2002	10,803
Interest payments recorded as a reduction of carrying value in 2003	<u>(2,578)</u>
Carrying value in excess of principal as of December 31, 2003	8,225
Interest payments recorded as a reduction of carrying value in 2004	<u>(2,281)</u>
Carrying value in excess of principal as of December 31, 2004	5,944
Interest payments recorded as a reduction of carrying value in 2005	<u>(1,618)</u>
Write-off of net remaining carrying value in excess of principal upon early repayment of debt	<u>(4,326)</u>
Carrying value in excess of principal as of December 31, 2005	<u>\$ —</u>

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**CBEYOND, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

**7. Income Taxes**

The Company recorded income tax expense during the year ended December 31, 2006 due to being subject to federal alternative minimum tax (AMT) requirements.

The current and deferred income tax provisions were as follows for the years ended December 31, 2004, 2005 and 2006:

	<u>2004</u>	<u>2005</u>	<u>2006</u>
<b>Current</b>			
Federal	\$ —	\$ —	\$ 430
State	<u>—</u>	<u>—</u>	<u>—</u>
Total current	<u>—</u>	<u>—</u>	<u>430</u>
<b>Deferred</b>			
Federal	(4,002)	6,097	5,064
State	(286)	436	207
Change in valuation allowance	4,288	(6,533)	(5,271)
Total deferred	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>
Income tax provision	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 430</u>

The following table summarizes the significant differences between the U.S. federal statutory tax rate and the Company's effective tax rate for financial statement purposes for the years ended December 31, 2004, 2005 and 2006:

	<u>2004</u>	<u>2005</u>	<u>2006</u>
Federal income tax (benefit) provision at statutory rate	\$(4,010)	\$ 1,308	\$ 2,874
State income taxes, net of federal benefit	(286)	93	117
Nondeductible expenses	8	147	123
Alternative minimum tax (AMT)	—	—	430
Adjustments to net operating loss carryforward	—	4,985	2,157
Change in valuation allowance	4,288	(6,533)	(5,271)
	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 430</u>

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## CBEYOND, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The income tax effects of temporary differences between the carrying amounts of assets and liabilities in the financial statements and their respective income tax bases, which give rise to deferred tax assets and liabilities, as of December 31, 2005 and 2006 are as follows:

	2005	2006
Deferred tax assets:		
Net operating loss	\$ 38,068	\$ 29,641
Carrying value in excess of principal	831	—
Allowance for doubtful accounts	679	942
Impairment of investments	176	—
Accrued liabilities	2,421	5,327
Share-based compensation expense	—	1,848
Other	(118)	55
Gross deferred tax assets	<u>42,057</u>	<u>37,813</u>
Deferred tax liabilities:		
Property and equipment	3,284	2,822
Other	—	1,489
Gross deferred tax liabilities	<u>3,284</u>	<u>4,311</u>
Net deferred tax assets	38,773	33,502
Valuation allowance	<u>(38,773)</u>	<u>(33,502)</u>
Net deferred taxes	<u>\$ —</u>	<u>\$ —</u>

At December 31, 2006, the Company has federal net operating loss carryforwards of approximately \$96,326 state net operating loss carryforwards of \$70,117, which begin expiring in 2020. The federal net operating loss carryforward consists of both regular net operating losses of \$81,830 (with a corresponding deferred tax asset of \$29,641) and net operating losses related to share-based compensation of \$14,496. Utilization of existing net operating loss carryforwards may be limited in future years if significant ownership changes were to occur. The Company has recorded a valuation allowance equal to the net deferred tax assets at December 31, 2005 and 2006, due to the uncertainty of future taxable income.

The provision for income taxes during the year ended December 31, 2006 consisted of \$430 of estimated alternative minimum tax (AMT) expected to be due at year-end, based on current annual book and taxable income. The AMT tax results from the ability to offset only 90% of AMT net operating losses against AMT taxable income. The AMT results in a credit that will be used to offset income taxes due in future periods, when and if the Company pays regular income tax.

Under FAS 123(R), the Company continues to follow the with-and-without approach and considers the impact of excess stock option deductions last when computing its income tax provision. The excess tax benefits are credited to additional paid-in-capital to the extent they are used to offset the AMT tax payable.

As of December 31, 2006, net operating loss carryforwards include tax deductions of approximately \$14,496 resulting from the exercise of stock options. In accordance with FAS 123(R), any income tax benefit derived from these tax deductions is reflected as additional paid-in capital at the time we recognize any such income tax benefit. During 2006, the Company also recognized as tax expense approximately \$290 of alternative minimum tax (AMT) that would have been payable had there been no stock option deductions. Actual stock option deductions incurred for income tax purposes results in an actual payment of AMT in the amount of \$140. A "hypothetical" deferred income tax asset is created by the AMT expense incurred.

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Table of Contents**CBEYOND, INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)****8. Share-Based Compensation Plans**

In November 2005, in connection with the Company's initial public offering, the Company adopted the Cbeyond Communications, Inc. 2005 Equity Incentive Plan (Incentive Plan). The Incentive Plan permits the grant of nonqualified stock options, incentive stock options, restricted stock and stock purchase rights. At December 31, 2006, the number of shares of common stock that may be issued pursuant to the Incentive Plan is 5,806, including 3,615 shares rolled over into the Incentive Plan from the 2002 Plan and the 2000 Plan. Substantially all of the options granted under the Incentive Plan following the 2005 initial public offering vest at a rate of 25% per year over four years, although the Board of Directors may occasionally approve a different vesting period. Options are granted at exercise prices not less than fair market value of the Company's common stock on the date of grant. The fair market value of the Company's common stock will be determined by the closing price of the Company's common stock on the NASDAQ Global Market on the grant date. Options expire 10 years after the grant date.

In November 2002, in connection with the Company's recapitalization, the Company adopted the Cbeyond Communications, Inc. 2002 Equity Incentive Plan (2002 Plan) and issued 1,621 and 295 options thereunder with respective vesting periods of two and three years. The 2002 Plan permits the grant of nonqualified stock options, incentive stock options and stock purchase rights. The number of shares of common stock that may be issued pursuant to the 2002 Plan is 3,608. Substantially all of the options granted under the 2002 Plan following the 2002 recapitalization vest at a rate of 25% per year over four years, although the Board of Directors may occasionally approve a different vesting period. Options issued under the 2002 Plan were generally granted at exercise prices equal to the estimated fair value of the Company's common stock on the date of grant. For each fiscal year since the 2002 recapitalization and prior to the Company's initial public offering in November 2005, the Company had determined the fair value of its common stock by using independent external valuation events such as arms-length transactions in the Company's shares, significant business milestones that may have affected the value of our business, and internal valuation estimates based on discounted cash flow analysis of the Company's financial results or other metrics, such as multiples of revenue and adjusted EBITDA. Options expire 10 years after the grant date.

In addition to the 2002 Plan, the Company also maintains a 2000 Stock Incentive Plan (2000 Plan), of which the number of shares of common stock that may be issued pursuant to the 2000 Plan is 7. All of the shares remaining for issuance under the 2002 Plan and the 2000 Plan were rolled into the Incentive Plan and no additional awards will be granted under either the 2002 Plan or the 2000 Plan. All awards granted under the 2002 Plan or 2000 Plan that expire without having been exercised or are cancelled, forfeited or repurchased will become available for grant under the Incentive Plan.

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**CBEYOND, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

A summary of the status of the Incentive Plan, the 2002 Plan and the 2000 Plan is presented in the table below:

	<u>Shares</u>	<u>Weighted Average Exercise Price</u>	<u>Weighted Average Remaining Contractual Term (years)</u>	<u>Aggregate Intrinsic Value</u>
Outstanding, December 31, 2003	2,664	3.90		
Granted	344	11.35		
Exercised	(8)	3.88		
Forfeited	(118)	4.11		
Outstanding, December 31, 2004	2,882	4.78		
Granted	971	11.87		
Exercised	(33)	3.92		
Forfeited	(177)	6.64		
Outstanding, December 31, 2005	<u>3,643</u>	<u>\$ 6.60</u>		
Granted	1,072	15.27		
Exercised	(854)	4.79		
Forfeited and expired	(226)	12.52		
Outstanding, December 31, 2006	3,635	\$ 9.20	7.51	\$77,737
Vested and expected to vest, December 31, 2006	3,498	\$ 8.94	7.48	\$75,719
Options exercisable, December 31, 2006	1,847	\$ 5.39	6.37	\$46,547

The weighted-average fair value of all options at grant date for options granted in 2004, 2005 and 2006 was \$5.57, \$11.87 and \$9.45 per share, respectively. During 2006, the weighted average fair value of the 487 options that vested during the period was \$5.55 per share, representing a total fair value of options vesting during the period of \$2,703. The amount by which fair value of the stock exceeds an option's exercise price at the applicable grant date is amortized over the vesting period and recognized as non-cash stock option compensation in the consolidated statement of operations. The Company has 1,259 options available for future grant as of December 31, 2006.

The following table provides additional information based on the exercise prices of options outstanding at December 31, 2006:

<u>Option Price</u>	<u>Options Outstanding</u>	<u>Options Exercisable</u>	<u>Contractual Life</u>
\$3.88	1,632	1,512	6.1
\$11.00	593	20	9.1
\$11.71	53	11	8.9
\$11.83	575	144	8.1
\$12.00	223	48	8.8
\$12.03	184	96	7.6
\$13.43	3	3	4.4
\$18.28	72	0	9.6
\$20.30	217	13	9.3
\$30.36	83	0	9.8
Total	<u>3,635</u>	<u>1,847</u>	<u>7.5</u>

Table of Contents**CBeyond, INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

Prior to January 1, 2006, the Company followed APB No. 25 and related Interpretations in accounting for its stock options. Under APB No. 25, if the exercise price of the Company's employee stock options equaled or exceeded the market value of the underlying stock on the date of the grant, no compensation expense was recognized. Effective January 1, 2006, the Company adopted the fair value recognition provisions of SFAS 123(R), under which the Company recognizes, as expense over the applicable service period the fair value of the options granted. Total share-based compensation expense recognized in 2006 totaled \$4,355 under the new method, a reduction of \$0.16 and \$0.15, respectively, in basic and diluted earnings per share. Additionally, the adoption increased cash flows from financing activities and decreased cash flows from operating activities by \$290 relating to excess tax benefits from the exercise of stock options.

The fair value of options was estimated at the date of grant using a binomial option-pricing model with the following weighted-average assumptions:

	Year ended December 31,		
	2004	2005	2006
Risk-free interest rate	3.4%	3.9%	4.6%
Expected dividend yield	0.0%	0.0%	0.0%
Expected volatility	53.7%	55.3%	63.0%
Suboptimal exercise barrier	2.31	2.44	2.96

The Company accounts for equity instruments issued to non-employees in accordance with the provisions of SFAS No. 123 and EITF Issue No. 96-18, *Accounting for Equity Instruments that are Issued to Other Than Employees for Acquiring, or in Conjunction with, Selling Goods or Services*. All transactions in which goods or services are the consideration received for the issuance of equity instruments are accounted for based on the fair value of the equity instrument issued, which the Company deems more reliably measurable than the fair value of the consideration received. The measurement date of the fair value of the equity instrument issued is the earlier of the date on which the counterparty's performance, or obligation to perform, is complete or the date on which it is probable that performance will occur. During 2004 and 2005, respectively, the Company issued 13 and 3 common stock options to vendors for services. In 2004 and 2005, respectively, these options were valued at \$78 and \$16. The Company recognized \$13, \$38 and \$22 in selling, general and administrative expenses for the years ended December 31, 2004, 2005 and 2006, respectively.

Management evaluates the appropriateness of its underlying assumptions each time it estimates the fair value of equity instruments requiring measurement under SFAS 123(R). To assist management in validating its assumptions, the Company periodically engages consultants, as it did in 2006, with relevant experience to assess and evaluate its assumptions.

The risk-free interest rate used in estimating the fair value of options is based on the U.S. Treasury zero-coupon securities using the contractual term of the option. The Company also uses historical data, stratified into employee groups that exhibit similar behavior, to estimate the term that options are expected to be outstanding and the forfeiture rate of options granted. Through the first quarter of 2006, the Company stratified employees into four groups for these purposes. Beginning in the second quarter of 2006, the Company reduced its stratification to two employee groups because three of the previously stratified employee groups did not exhibit substantially different behavior over time and, accordingly, yield similar valuations. Because Cbeyond is a recently public company and does not have its own volatility history to rely upon, expected volatility is based on historical volatilities experienced by companies considered representative of Cbeyond based on four primary categories: size, stage of lifecycle, capital structure and industry. This approach to estimating volatility has remained consistent over time, although the mix and weighting of representative volatilities has been refined periodically to ensure that the four primary categories are appropriately considered. Through the first quarter of

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**CBEYOND, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

2006, the Company included certain indices, including a small cap index and a telecom index, as part of the representative group. Effective in the second quarter of 2006, the Company refined its representative group and included only individual stocks in its volatility analysis. In reviewing the modifications to the development of its underlying valuation assumptions, the Company considered whether applying the refined assumptions would have had a material impact on recent valuations performed using the previous assumptions, noting that the effect on compensation expenses would not have resulted in a materially different amount.

Options with graded vesting are valued as multiple awards and expensed on a straight line basis over the vesting period. The amount of compensation cost recognized at any date is at least equal to the portion of the grant date value of the award that is vested at that date. During the twelve months ended December 31, 2005 and 2006, the Company issued 34 and 854 shares of common stock, respectively, resulting from the exercise of stock options. The total intrinsic value of options exercised during the twelve months ended December 31, 2005 and 2006 based on market value at the exercise dates is set forth in the table below. As of December 31, 2006, unrecognized compensation cost related to unvested stock option awards totals approximately \$11,622 and is expected to be recognized over a weighted-average period of 1.87 years. Additional information pertaining to option exercises in 2004, 2005 and 2006 is as follows:

	<u>December 31</u>		
	<u>2004</u>	<u>2005</u>	<u>2006</u>
Total intrinsic value of options exercised	\$ 47	\$ 337	\$14,594
Total cash received for option exercises	\$ 30	\$ 130	\$ 4,093

**9. Commitments**

The Company has entered into various operating and capital leases, with expirations through 2016, for network facilities, office space, equipment, and software used in its operations. Future minimum lease obligations under non-cancelable operating leases and maturities of capital lease obligations as of December 31, 2006 are as follows:

	<u>Operating</u>	<u>Capital</u>
2007	\$ 4,375	\$ 100
2008	4,933	—
2009	5,015	—
2010	5,037	—
2011	4,962	—
Thereafter	—	—
	<u>16,903</u>	<u>—</u>
	<u>\$41,225</u>	100
Less amounts representing interest		(2)
Present value of minimum lease payments		98
Less current portion		98
Obligations under capital leases—net of current portion		<u>\$ —</u>

Total rent expense for the years ended December 31, 2004, 2005 and 2006 was \$2,218, \$2,766 and \$3,360, respectively. Certain real estate leases have fixed escalation clauses, holidays, and leasehold improvement allowances. Such allowances were \$887 and \$1,775 in 2005 and 2006, respectively, and are depreciated over the shorter of their useful lives or the lease term. Expense under such operating leases is recorded on a straight-line

Table of Contents**CBEYOND, INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

basis over the life of the lease. Our lease agreements also generally have lease renewal options that are at our discretion and range in terms.

The net book value of the software under capital leases at December 31, 2004, 2005 and 2006 was \$870, \$544 and \$218, respectively. The Company applies its incremental borrowing rate in effect at the time a capital lease is initiated to determine the present value of the future minimum lease payments.

At December 31, 2006, the Company had outstanding letters of credit of \$1,020. These letters of credit expire at various times through August 2007 and collateralize the Company's obligations to third parties for leased space. The fair value of these letters of credit approximates contract values.

**10. Employee Benefit Plan**

The Company has a 401(k) Profit Sharing Plan (the Plan) for the benefit of eligible employees and their beneficiaries. All employees are eligible to participate in the Plan on the first day of the following quarter of the Plan year following the date of hire provided they have reached the age of 18. The Plan provides for an employee deferral up to the dollar limit that is set by law. As of the year ended December 31, 2006, the Plan did not provide for a matching contribution by the employer.

Effective January 1, 2007, for all 401(k) plan participants, there will be a Company match of 50% of up to 3% of eligible compensation as well as a company discretionary contribution of 1.5% of eligible compensation. Eligible compensation includes base salary and any commissions. Both the match and discretionary contribution will be made in Cbeyond stock.

**11. Selected Quarterly Financial Data (unaudited)***Unaudited Interim Results*

The accompanying unaudited interim condensed consolidated financial statements and information have been prepared in accordance with accounting principles generally accepted in the United States and in accordance with the instructions for Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and disclosures required by accounting principles generally accepted in the United States for complete financial statements. In the opinion of management, these financial statements contain all normal and recurring adjustments considered necessary to present fairly the financial position, results of operations and cash flows for the periods presented.

	<u>First Quarter</u>	<u>Second Quarter</u>	<u>Third Quarter</u>	<u>Fourth Quarter</u>
<b>2005</b>				
Revenue	\$35,176	\$38,182	\$41,403	\$44,336
Gross profit (exclusive of depreciation and amortization)	24,732	26,802	29,408	30,994
Operating income (loss)	(1,117)	(289)	1,380	1,349
Depreciation and amortization expense	5,674	5,978	6,097	6,411
Gain from write-off of carrying value in excess of principal	—	—	—	4,060
Income (loss) before income taxes	\$ (1,576)	\$ (932)	\$ 928	\$ 5,316
Net income (loss)	\$ (1,576)	\$ (932)	\$ 928	\$ 5,316
Net income (loss) attributable to common stockholders	\$ (3,961)	\$ (3,417)	\$ (1,660)	\$ 4,224
Net loss attributable to common stockholders per common share—basic	\$ (28.63)	\$ (21.96)	\$ (10.06)	\$ 0.26
Net loss attributable to common stockholders per common share—diluted	\$ (28.63)	\$ (21.96)	\$ (10.06)	\$ 0.20

## Table of Contents

## CBEYOND, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
<b>2006</b>				
Revenue	\$47,578	\$52,534	\$54,907	\$58,867
Gross profit (exclusive of depreciation and amortization)	32,580	36,281	38,447	42,284
Operating income (loss)	(174)	1,265	1,931	4,021
Depreciation and amortization expense	6,577	6,864	6,937	6,818
Income before income taxes	\$ 51	\$ 1,500	\$ 2,143	\$ 4,516
Net income	\$ 20	\$ 1,406	\$ 2,005	\$ 4,349
Net income attributable to common stockholders	\$ 20	\$ 1,406	\$ 2,005	\$ 4,349
Net income attributable to common stockholders per common share—basic	\$ —	\$ 0.05	\$ 0.07	\$ 0.16
Net income attributable to common stockholders per common share—diluted	\$ —	\$ 0.05	\$ 0.07	\$ 0.15

**12. Segment Information**

The Company's management monitors and analyzes financial results on a segment basis for reporting and management purposes. Specifically, the Company's chief operating decision maker allocates resources to and evaluates the performance of its segments based, depending on which segment, on revenue, direct operating expenses, and certain non-GAAP financial measures. The accounting policies of the Company's reportable segments are the same as those described in the summary of significant accounting policies.

At December 31, 2006, the operating segments were geographic and included Atlanta, Dallas, Denver, Houston, Chicago and Los Angeles. The newest market, San Diego, was launched in January 2007 and incurred costs in 2006 related to this launch. Although San Diego is not operating as of December 31, 2006, the costs incurred in preparing for its launch are disclosed as a separate segment. The balance of the Company's operations is in its Corporate group, for which the operations consist of corporate executive, administrative and support functions and centralized operations, which includes network operations, customer care and provisioning. The Corporate group is treated as a separate segment consistent with the manner in which management monitors and analyzes financial results.

Corporate costs are not allocated to the other segments because such costs are managed and controlled on a centralized, functional basis that spans all markets, with centralized, functional management held accountable for Corporate results. Management also believes that the decision not to allocate these centralized costs provides a better evaluation of each revenue-producing geographic segment. Management does not report assets by segment since it manages assets and makes decisions on technology deployment and other investments on a company-wide rather than on a local market basis. The chief operating decision maker does not use segment assets in evaluating the performance of operating segments. As a result, management does not believe that segment asset disclosure is meaningful information to investors. In addition to segment results, the Company uses total adjusted EBITDA to assess the operating performance of the overall business. Because the chief operating decision maker primarily evaluates the performance of each segment on the basis of adjusted EBITDA, management believes that segment adjusted EBITDA data should be available to investors so that investors have the same data that management employs in assessing the Company's overall operations. The chief operating decision maker also uses revenue to measure operating results and assess performance, and both revenue and adjusted EBITDA are presented herein in accordance with SFAS NO. 131, *Disclosures about Segments of an Enterprise and Related Information*.

## Table of Contents

**CBEYOND, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

The table below presents information about the Company's reportable segments:

	Year Ended December 31,		
	2004	2005	2006
Revenue:			
Atlanta	\$ 42,236	\$ 53,719	\$ 63,529
Dallas	33,129	42,277	51,335
Denver	35,051	47,916	58,531
Houston	2,895	13,051	26,382
Chicago	—	2,134	12,281
Los Angeles	—	—	1,828
Total revenue	<u>\$113,311</u>	<u>\$159,097</u>	<u>\$213,886</u>
Adjusted EBITDA:			
Atlanta	\$ 24,986	\$ 30,174	\$ 37,881
Dallas	12,353	18,561	24,008
Denver	17,750	24,954	31,835
Houston	(3,954)	1,377	8,676
Chicago	(565)	(5,470)	(1,411)
Los Angeles	—	(382)	(5,624)
San Diego	—	—	(630)
Corporate	(33,768)	(43,407)	(55,196)
Total Adjusted EBITDA	<u>\$ 16,802</u>	<u>\$ 25,807</u>	<u>\$ 39,539</u>
Operating income (loss):			
Atlanta	\$ 18,922	\$ 24,255	\$ 32,808
Dallas	7,281	13,374	18,934
Denver	13,404	19,773	26,985
Houston	(4,658)	(285)	5,974
Chicago	(568)	(6,090)	(2,913)
Los Angeles	—	(382)	(6,254)
San Diego	—	—	(631)
Corporate	(41,704)	(49,322)	(67,860)
Total operating income (loss)	<u>\$ (7,323)</u>	<u>\$ 1,323</u>	<u>\$ 7,043</u>

## Table of Contents

**CBEYOND, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

	Year Ended December 31,		
	2004	2005	2006
Depreciation and amortization expense:			
Atlanta	\$ 6,064	\$ 5,919	\$ 5,073
Dallas	5,072	5,187	5,074
Denver	4,346	5,181	4,850
Houston	703	1,662	2,702
Chicago	3	620	1,502
Los Angeles	—	—	630
San Diego	—	—	1
Corporate	6,459	5,591	7,364
Total depreciation and amortization	<u>\$ 22,647</u>	<u>\$ 24,160</u>	<u>\$ 27,196</u>
Capital expenditures:			
Atlanta	\$ 2,742	\$ 4,946	\$ 5,669
Dallas	2,870	3,976	6,923
Denver	3,903	3,838	4,961
Houston	4,041	4,039	3,587
Chicago	2,325	3,256	2,843
Los Angeles	—	2,131	3,444
San Diego	—	—	1,561
Corporate	7,860	7,580	14,879
Total capital expenditures	<u>\$ 23,741</u>	<u>\$ 29,766</u>	<u>\$ 43,867</u>
Reconciliation of Adjusted EBITDA to Net income (loss):			
Total Adjusted EBITDA for reportable segments	\$ 16,802	\$ 25,807	\$ 39,539
Depreciation and amortization	(22,647)	(24,160)	(27,196)
Non-cash share-based compensation	(375)	(324)	(4,355)
Public offering expenses	(1,103)	—	(945)
Interest income	637	1,325	1,919
Interest expense	(2,788)	(2,424)	(163)
Gain from write-off of carrying value of debt in excess of principal	—	4,060	—
Loss on disposal of property and equipment	(1,746)	(539)	(601)
Other income (expense), net	(236)	(9)	12
Income (loss) before income taxes	(11,456)	3,736	8,210
Income tax expense	—	—	(430)
Net income (loss)	<u>\$(11,456)</u>	<u>\$ 3,736</u>	<u>\$ 7,780</u>

**13. Public Offering Costs**

In 2004, the Company began work in connection with an initial public offering of common stock. In connection with the proposed offering, the Company incurred legal and accounting fees of approximately \$1,103. Although such transaction costs are typically deferred and deducted from the proceeds of the offering as a charge against additional paid-in capital, due to the length of time that transpired after these costs were incurred and other considerations, management determined it was appropriate to expense such costs. In early 2005, the Company began incurring additional costs associated with its initial public offering which was completed in November 2005. The costs associated with the November 2005 public offering, excluding the underwriting discount, totaled \$3,641 and were offset against the proceeds of the offering.

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**Table of Contents****CBEYOND, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

In October 2006, the Company completed a secondary public offering of 4,907 shares of common stock, including 201 shares that were issued by the Company in connection with option exercises executed at the time of the offering. All offered shares were from existing stockholders with no proceeds to the Company. All direct costs of this offering, which were primarily legal and accounting fees with outside service firms related to the preparation of the registration statement, were expensed as incurred and totaled \$945.

**14. Contingencies***Triennial Review Remand Order*

In February 2005, the Federal Communications Commission (the "FCC") issued its Triennial Review Remand Order (the "TRRO") and adopted new rules, effective March 11, 2005, governing the obligations of incumbent local exchange carriers (ILECs) to afford access to certain of their network elements, if at all, and the cost of such facilities. The TRRO reduces the ILECs' obligations to provide high-capacity loops within, and dedicated transport facilities between, certain ILEC wire centers that are deemed to be sufficiently competitive, based upon various factors such as the number of fiber-based colocators and/or the number of business access lines within such wire centers. In addition, certain caps are imposed regarding the number of UNE facilities that the ILECs are required to make available on a single route or into a single building. Where the wire center conditions or the caps are exceeded, the TRRO eliminated the ILECs' obligations to provide these high-capacity circuits to competitors at the discounted rates historically received under the 1996 Telecommunications Act.

The rates charged by ILECs for the Company's high-capacity circuits in place on March 11, 2005 that were affected by the FCC's new rules were increased 15% effective for one year until March 2006. In addition, by March 10, 2006, the Company was required to transition those existing facilities to alternative arrangements, such as other competitive facilities or the higher-priced "special access services" offered by the ILECs, unless another rate had been negotiated. Subject to any contractual protections under the Company's existing interconnection agreements with ILECs, beginning March 11, 2005, the Company was also potentially subject to the ILECs' higher "special access" pricing for any new installations of DS-1 loops and/or DS-1 and DS-3 transport facilities in the affected ILEC wire centers, on the affected transport routes or that exceeded the caps.

The Company estimated the probable liability for implementation of certain provisions of the TRRO and accrued approximately \$1,892 as of December 31, 2005 for these liabilities, which were charged to cost of service in the year ended December 31, 2005. The estimate includes \$1,553 for the total cost impact related to wire centers and transport routes deemed sufficiently competitive. For costs associated with the caps imposed on the number of circuits that the Company may have on a single route or into a single building, approximately \$339 is reflected in the results of operations through December 31, 2005.

The Company estimated the probable liability for implementation of certain provisions of the TRRO and has accrued approximately \$4,400 as of December 31, 2006 for these increased costs, \$2,507 of which was charged to cost of service in the year ended December 31, 2006. This cumulative estimate includes \$3,701 for the total cost impact related to wire centers and transport routes determined to be sufficiently competitive to be subject to the FCC's new rules, of which \$2,148 is reflected in cost of service through December 31, 2006. This cumulative estimate also includes \$699 for costs associated with the caps imposed on the number of circuits that the Company may have on a single route or into a single building, of which approximately \$360 is reflected in cost of service through December 31, 2006. This estimate is for all markets and, where alternate pricing agreements have not been reached, is based on special access rates available under volume and/or term pricing plans. The Company believes volume and/or term pricing plans are the most probable pricing regime to which we are subject to based on our experience and our intent to enter into volume and/or term commitments where more attractively priced alternatives do not exist.

During October 2006, the Company amended its interconnection agreement for the Atlanta market. This agreement established the pricing in effect from March 11, 2005 through March 10, 2006 for certain circuits

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**CBEYOND, INC. AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)**

added subsequent to March 11, 2005. The agreed upon pricing was lower than the special access rates previously accrued, resulting in a reduction of the accrual and expense of \$304, \$216 of which relates to 2005. This change in estimate is reflected in the results of operations for year ended December 31, 2006.

*Georgia Regulatory Ruling*

In February 2006, the Georgia Public Service Commission (the "PSC") ordered a rate increase for the lease of unbundled network elements provided by BellSouth. The increased rates are applicable both prospectively and retroactively to June 2003. The Company estimated and accrued approximately \$1,471 through December 31, 2005 for the cumulative impact of this action, which was charged to cost of service in the fourth quarter of 2005. Prior to the PSC staff recommendation, there was insufficient information as to whether the outcome of this matter would result in a change in pricing and whether such change in pricing, if any, would be applied retroactively or prospectively.

During the year ended December 31, 2006, the Company accrued an additional \$982 relating to the new pricing, resulting in a total accrual of \$2,453 as of December 31, 2006. Although the Company continues to negotiate the final settlement of the retroactive payment due, the recorded accrual represents management's best estimate of the ultimate settlement of this matter.

*General Regulatory Contingencies*

The Company operates in a highly regulated industry and is subject to regulation and oversight by telecommunications authorities at the federal, state and local levels. Decisions made by these agencies, including the various rulings made to date regarding interpretation and implementation of the TRRO, compliance with various federal and state rules and regulations and other administrative decisions are frequently challenged through both the regulatory process and through the court system. Challenges of this nature often are not resolved for long periods of time and occasionally include retroactive impacts, such as the PSC ruling discussed above. At any point in time, there are a number of similar matters before the various regulatory agencies that could be either beneficial or adverse to the Company's results of operations. In addition, the Company is always at risk of non-compliance, which can result in fines and assessments. The Company regularly evaluates the potential impact of matters undergoing challenges and matters involving compliance with regulations to determine whether sufficient information exists to require either disclosure and/or accrual in accordance with Statement of Financial Accounting Standard No. 5, *Accounting for Contingencies*. However, due to the nature of the regulatory environment, reasonably estimating the range of possible outcomes and the probabilities of the possible outcomes is difficult since many matters could range from a gain contingency to a loss contingency.

*Dissolution of Captive Leasing Entities*

Effective December 31, 2006, the Company dissolved and collapsed its captive leasing companies. These entities, historically, purchased assets tax-free and leased the assets to the operating companies as a means of preserving cash flow in the Company's start-up phase of operations. During 2006, management determined that the nature of the Company's operations and experience with asset duration did not justify the administrative cost and effort of maintaining these entities. In connection with the collapse, a final accounting of all activity under the leasing entities was performed and reconciled back to historical sales tax filings. Certain underpayments were identified that resulted in the recognition of approximately \$128 in penalties and interest in selling, general and administrative costs during the fourth quarter of 2006. This amount represents management's best estimate of what it believes it will have to pay in connection with finalizing all sales tax returns for the leasing entities. There are certain scenarios that are reasonably possible where a taxing authority could calculate penalties and interest in excess of the amounts accrued by the Company. In accordance with FAS 5, the additional interest and penalties could range from zero to \$392.

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Table of Contents**CBeyond, INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)****15. Related Party Transactions**

Cbeyond has had a close relationship with Cisco Systems, Inc. and its financing subsidiary, Cisco Systems Capital (collectively, Cisco). Cisco has been and continues to be one of the Company's major equipment suppliers. In addition, one of its executives is on the Company's Board of Directors and Audit Committee. All transactions with Cisco are carried out on an arm's-length basis.

Cisco was also the Company's principal lender until shortly after the Company's initial public offering when Cbeyond repaid all outstanding borrowings and cancelled its credit facility. In connection with transactions under the credit arrangement, Cisco became a significant shareholder of the Company.

During the year ended December 31, 2006, the Company purchased approximately \$18,700 of equipment and services from Cisco. As of December 31, 2006, the Company's outstanding accounts payable to Cisco totaled approximately \$1,300.

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**Table of Contents****Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosures**

None.

**Item 9A. Controls and Procedures****Disclosure Controls and Procedures**

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we have evaluated the effectiveness of our disclosure controls and procedures pursuant to Exchange Act Rule 13a-15(b) as of the end of the period covered by this report. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that these disclosure controls and procedures are effective.

**Management's Annual Report On Internal Control Over Financial Reporting**

Management is responsible for establishing and maintaining adequate internal control over financial reporting for the Company. With the participation of our Chief Executive Officer and Chief Financial Officer, management conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2006 based on the Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that our internal control over financial reporting was effective as of December 31, 2006. There were no changes in our internal control over financial reporting during the quarter ended December 31, 2006 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Our independent registered public accounting firm, Ernst & Young LLP, has issued an audit report on management's assessment of our internal control over financial reporting, which appears in Item 8 of this report.

**Item 9B. Other Information**

None.

**ROSHKA DEWULF & PATTEN**

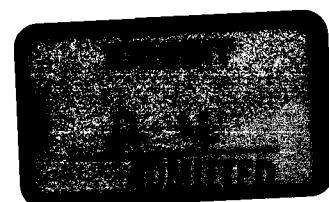
ROSHKA DEWULF & PATTEN, PLC  
ATTORNEYS AT LAW  
ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET  
SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

**RECEIVED**

2007 OCT 16 A 11:49

AZ CORP COMMISSION  
DOCKET CONTROL  
October 16, 2007

Ms. Candrea Allen  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007



RE: Cbeyond Communications, LLC's -- Response to Staff's 2<sup>nd</sup> set of Data Requests  
Docket No. T-20497A-06-0802

Dear Ms. Allen:

Enclosed please find the response to Staff's 2<sup>nd</sup> set of data requests to Cbeyond Communications, LLC.

Sincerely,

Michael W. Patten

MWP:mi  
Enclosures  
cc: Docket Control

CBEYOND COMMUNICATIONS, LLC'S  
RESPONSES TO STAFF'S SECOND SET OF DATA REQUESTS  
DOCKET NO. T-20497A-06-0802  
October 16, 2007

Please make certain that each numbered item and each part of the item is answered completely. In order for Staff to continue with its review of this application, the following information must be submitted:

- 2.1                      According to the Applicant's response to question (A-11) of the application, the Federal Communications Commission ("FCC") has initiated an investigation against Cbeyond. Please provide Staff with any and all documents relating to the FCC investigation including any underlying consumer complaints, whether formal or informal, any filings requested by the FCC, any and all responses to those requests, and any findings, filing and/or orders made by the FCC regarding this investigation.

RESPONSE:            Attached is the FCC's order in the above referenced FCC docket. As previously communicated to Staff, all materials requested above were submitted confidentially to the FCC (see Response to Staff Data Request 3.1). CBeyond requests that the FCC be accepted in lieu of the voluminous and confidential filings underlying the FCC order.

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	File No. EB-06-IH-0840
	)	
	)	
Cbeyond Communications, Inc.	)	NAL/Acct. No. 200632080153
	)	
	)	
Notice of Apparent Liability for Forfeiture	)	FRN: 0003759602

**ORDER**

Adopted: October 5, 2007

Released: October 9, 2007

By the Chief, Enforcement Bureau:

1. In this Order, the Enforcement Bureau ("Bureau") of the Federal Communications Commission ("FCC" or "Commission") adopts the attached Consent Decree entered into between the Bureau and Cbeyond Communications, Inc. ("Cbeyond"). The Consent Decree terminates a Notice of Apparent Liability for Forfeiture ("NAL") against Cbeyond for its apparent violation of section 222 of the Communications Act of 1934, as amended, ("the Act") and section 64.2009(e) of the Commission's rules.<sup>1</sup> In addition, the Consent decree terminates an investigation into Cbeyond's compliance with section 64.2007(a)(3) of the Commission's rules regarding customer proprietary network information ("CPNT").<sup>2</sup>

2. The Bureau and Cbeyond have negotiated the terms of a Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. Based on the record before the Bureau, and in the absence of material new evidence relating to this matter, the Bureau concludes that there are no substantial or material questions of fact as to whether Cbeyond possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

4. After reviewing the terms of the Consent Decree, the Bureau finds that the public interest would be served by adopting the Consent Decree and terminating the NAL and the investigation.

5. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 503 of the Communications Act of 1934, as amended,<sup>3</sup> that the attached Consent Decree IS ADOPTED.

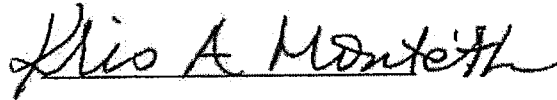
<sup>1</sup> 47 U.S.C. § 222; 47 C.F.R. § 64.2009(e).

<sup>2</sup> 47 C.F.R. § 64.2007(a)(3).

<sup>3</sup> 47 U.S.C. § 154(i).

6. **IT IS FURTHER ORDERED** that the above-captioned NAL is terminated.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Kris A Monteith". The signature is written in a cursive style with a horizontal line underneath the name.

Kris Anne Monteith  
Chief, Enforcement Bureau

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	File No. EB-06-IH-0840
	)	
	)	
Cbeyond Communications, Inc.	)	NAL Acct. No. 200632080153
	)	
	)	
Notice of Apparent Liability for Forfeiture	)	FRN: 0003759602

CONSENT DECREE

1. The Enforcement Bureau ("Bureau") of the Federal Communications Commission (the "FCC" or "Commission") and Cbeyond, Inc. ("Cbeyond"), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into possible noncompliance by Cbeyond with the requirements of section 222 of the Communications Act of 1934, as amended (the "Act"), and sections 64.2007(a) and 64.2009(e) of the Commission's rules.<sup>1</sup>

2. For purposes of this Consent Decree, the following definitions shall apply:

- a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
- b) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
- c) "Cbeyond" means Cbeyond, Inc., any of its affiliates and any successors or assigns.
- d) "CPNI" means customer proprietary network information as defined in 47 U.S.C. § 222(h)(1).
- e) "Commission" means the Federal Communications Commission.
- f) "Effective date" means the date on which the Commission releases the Adopting Order.
- g) "Investigation" means the investigation commenced on February 1, 2006 by the Bureau letter of inquiry regarding Cbeyond's compliance with 47 U.S.C. § 222 of the Act and 47 C.F.R. §§ 64.2001-2009 that resulted in the Bureau's issuance of the NAL on April 21, 2006.
- h) "NAL" means the proceeding commenced on April 21, 2006 by the Bureau Notice of Apparent Liability for Forfeiture against Cbeyond Communications, Inc. for the apparent violation of section 64.2009(e) of the Commission's rules, 47 C.F.R. § 64.2009(e).
- i) "Order" or "Adopting Order" means an Order of the Commission adopting the terms and conditions of this Consent Decree without change, addition, or modification, and formally terminating the above-captioned Investigation and NAL.
- j) "Parties" means Cbeyond and the Bureau.
- k) "Rules" means the Commission's regulations set forth in Title 47 of the Code of Federal Regulations.

<sup>1</sup> 47 U.S.C. § 222; 47 C.F.R. §§ 64.2007(a), 64.2009(e).

## I. BACKGROUND

3. Section 222 of the Act requires telecommunications carriers to ensure that CPNI is adequately protected from unauthorized disclosure. The Commission's rules effectuated pursuant to section 222 protect the privacy of CPNI collected and held by providers of communications services.<sup>2</sup> For example, section 64.2009(e) requires telecommunications carriers to sign annually a certificate stating that it has established adequate procedures to ensure compliance with the Commission's CPNI rules. Carriers must also provide a statement accompanying the certificate explaining how its operating procedures ensure compliance with the Commission's CPNI rules.<sup>3</sup> In addition, section 64.2007(a)(3) of the Commission's rules requires a carrier to obtain approval for the use of CPNI and to maintain records of any such approval for one year.<sup>4</sup>

4. Cbeyond is a competitive telecommunications carrier headquartered in Atlanta, Georgia that provides competitive local and long distance wireline and wireless services to small businesses.<sup>5</sup> The Enforcement Bureau has been investigating the adequacy of procedures implemented by telecommunications carriers to ensure confidentiality of CPNI based on concerns regarding the apparent availability to third parties of sensitive, personal subscriber information.<sup>6</sup>

5. As part of its inquiry to ascertain the adequacy of procedures implemented by telecommunications carriers to ensure the confidentiality of their subscribers' CPNI, the Bureau directed all carriers by Public Notice to submit their most recent certification prepared in compliance with section 64.2009(e) of the Commission's rules.<sup>7</sup> On February 6, 2006, Cbeyond failed to submit its CPNI certification. Instead, Cbeyond submitted a statement that it "has commenced a comprehensive internal

<sup>2</sup> *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket Nos. 96-115 and 96-149, Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998) ("CPNI Order"). See also *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket Nos. 96-115 and 96-149, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409 (1999); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; 2000 Biennial Regulatory Review -- Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket Nos. 95-115, 96-149 and 00-257, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860 (2002).

<sup>3</sup> 47 C.F.R. § 64.2009(e) states that "[a] telecommunications carrier must have an officer, as an agent of the carrier, sign a compliance certificate on an annual basis stating that the officer has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the rules in this subpart. The carrier must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is or is not in compliance with the rules in this subpart."

<sup>4</sup> 47 C.F.R. § 64.2007(a)(3) requires telecommunications carriers to maintain records of approval required for use of CPNI, whether oral, written or electronic, for one year.

<sup>5</sup> [www.Cbeyond.net](http://www.Cbeyond.net).

<sup>6</sup> Some companies, known as "data brokers," have advertised the availability of wireless and wireline subscriber information. See, e.g. <http://www.epic.org/privacy/iei/>

<sup>7</sup> *Enforcement Bureau Directs all Telecommunications Carriers to Submit CPNI Compliance Certifications*, Public Notice, 21 FCC Rcd 756 (Enf. Bur. rel Jan. 30, 2006); *Enforcement Bureau Opens New Docket for the February 6, 2006, Filing of CPNI*, Public Notice, 21 FCC Rcd 1122 (Enf. Bur. rel Feb. 2, 2006).

review of its operating procedures for CPNI compliance . . . [but] does not presently have documents responsive to this request." The Bureau concluded that Cbeyond's statement constituted an admission that Cbeyond was not in compliance with section 64.2009(e) of the Commission's rules because the company had not established operating procedures adequate to ensure compliance with the Commission's CPNI rules and on April 21, 2006 issued a Notice of Apparent Liability for Forfeiture ("NAL") proposing a forfeiture of \$100,000 for this apparent violation.

6. Following the NAL, Cbeyond filed with the Commission a certificate executed by its Vice President for Regulatory and Legislative Affairs stating that the Company had established operating procedures adequate to ensure compliance with the Commission's rules governing protection and use of CPNI. Cbeyond also provided information regarding the Company's security measures to protect consumer information.

7. At the same time, the Bureau also was investigating allegations that Cbeyond had obtained proprietary information from another carrier and used that information in violation of section 222(b) of the Act and section 64.2001 et seq. of the Commission's rules.<sup>8</sup> The Bureau sent a letter of inquiry to Cbeyond on February 1, 2006. Cbeyond responded to the inquiry letter on February 13, 2006. In May 2006, Cbeyond and the Bureau began discussions to settle the investigations and signed an agreement tolling the existing statute of limitations and extending the date on which Cbeyond was required to pay the forfeiture or submit a response to the NAL.

## II. AGREEMENT

8. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the Investigation between Cbeyond and the Bureau. In express reliance on the covenants and representations contained herein, the Bureau agrees to terminate the Investigation and the NAL. In consideration for the termination of this Investigation and NAL and in accordance with the terms of this Consent Decree, Cbeyond agrees to the terms, conditions and procedures contained herein.

9. Cbeyond agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

10. Cbeyond agrees to make a voluntary contribution to the United States Treasury, without further protest or recourse to a trial *de novo*, in the amount of \$200,000 within thirty (30) calendar days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include "Acct. No. 200632080153" and "FRN No. 0003759602." Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229.

11. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance by Cbeyond with the requirements of the Act or the Commission's rules or orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Cbeyond does not admit or deny any noncompliance, violation, or liability associated with or arising from its actions or omissions involving the Act or the Commission's rules that are the subject of this Consent

<sup>8</sup> Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to James Geiger, Chief Executive Officer, and Julia Strow, Vice President, Regulatory and Legislative Affairs, Cbeyond Communications, LLC, dated February 1, 2006 ("LOT").

## Decree.

12. In consideration for the termination of the Investigation and NAL in accordance with the terms of this Consent Decree, Cbeyond agrees to submit to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, a copy of its most recent 64.2009(e) certification each year for the next two years no later than the anniversary of the Effective Date of this consent decree. In addition, Cbeyond agrees to continue to comply with the following practices and policies that it has already implemented:

- a) Cbeyond shall obtain written authorization from the customer of another carrier or provider of interconnected VoIP prior to accessing that customer's Customer Service Records ("CSRs") stored on the Operational Support Systems ("OSS") of such customer's service provider. Cbeyond shall maintain such written prior authorization (in hard-copy or via version-protected electronic copy) in a central location for two years from the date of the access and will make these records available to the FCC upon request.
- b) Cbeyond shall periodically inspect its written forms for obtaining prior approval as described in subparagraph a) to ensure that they are being filled out completely and properly.
- c) Cbeyond shall obtain a signed acknowledgement from each of its employees who might have access to Cbeyond customer CPNI stating that the employee understands Cbeyond's CPNI policy and that the employee agrees to comply with the terms of the policy. Violation of the policy will lead to disciplinary action up to and including termination.
- d) Cbeyond shall obtain a signed acknowledgement of Cbeyond's policy for obtaining access to the CPNI of other carriers or providers of interconnected VoIP (the "CSR policy") from each of its employees who might need to access CSRs stored in the OSS of other carriers or interconnected VoIP providers. The acknowledgement shall state that the employee understands Cbeyond's CSR policy and that the employee agrees to comply with the terms of the policy. Violation of this policy will lead to disciplinary action up to and including termination.
- e) Cbeyond shall conduct biannual CPNI policy and CSR policy training for all relevant employees, and Cbeyond shall also conduct monthly refresher training for its sales personnel to reinforce Cbeyond's CSR policies.
- f) Cbeyond shall place all terminals used for accessing CPNI in locations that allow for close supervision.
- g) Cbeyond shall utilize equipment and software that allows it to monitor and log websites being visited by individual computers in its network; Cbeyond shall analyze this information twice monthly to see if there are unusual usage patterns that might suggest improper use of CPNI or improper CSR access.

13. The Bureau agrees in the absence of new material evidence that it will not use the facts developed in this Investigation through the Effective Date or the existence of this Consent Decree to initiate, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Cbeyond concerning the matters that were the subject of the Investigation. The Bureau further agrees that it will not use the facts developed in the Investigation through the Effective Date or the existence of this Consent Decree to initiate, on its own motion, any proceeding, formal or informal, or take any action on its own motion against Cbeyond with respect to Cbeyond's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier, or with

respect to compliance with the Commission's rules and policies.

14. Nothing in this Consent Decree shall prevent the Commission or its delegated authority from considering or adjudicating any complaint that may be filed pursuant to section 208 of the Act, 47 U.S.C. § 208, and to take any action in response to such formal complaint. The Commission's adjudication of any such complaint will be based solely on the record established in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission or its delegated authority from investigating new evidence of noncompliance by Cbeyond of the Act, the Commission's rules, or the Order.

15. Cbeyond waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Order adopts this Consent Decree without change, addition, or modification.

16. Cbeyond's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Order that is consistent with this Consent Decree and adopts the Consent Decree without change, addition or modification.

17. In the event that this Consent Decree is rendered invalid by a court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

18. The Parties agree that if either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Order, neither Cbeyond nor the Commission shall contest the validity of the Consent Decree or the Order, and Cbeyond and the Commission will waive any statutory right to a trial *de novo* regarding the terms or validity of the Consent Decree.

19. The parties agree that this Consent Decree shall become effective on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of any term of this Consent Decree shall constitute a separate violation of a Commission order entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

20. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Cbeyond does not consent), that provision will be superseded by such Commission rule or order.

21. Cbeyond agrees that the provisions of this Consent Decree shall be binding on its successors and assigns.

22. Cbeyond agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

23. Cbeyond and the Bureau each represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

24. By this Consent Decree, Cbeyond neither waives nor alters its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information.

25. Cbeyond agrees that any violation of the Order or of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

26. The Parties agree that the requirements of this Consent Decree shall expire twenty-four (24) months from the Effective Date.

27. This Consent Decree may be signed in counterparts.



Kris Anne Monteith  
Chief, Enforcement Bureau  
Federal Communications Commission

10/5/07  
Date



William H. Weber  
Vice-President and Corporate Counsel  
Cbeyond, Inc.

10/5/2007  
Date

**ROSHKA DEWULF & PATTEN**

ROSHKA DEWULF & PATTEN, PLC  
ATTORNEYS AT LAW  
ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET  
SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

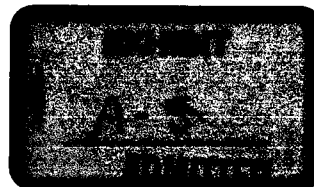
June 5, 2007

**RECEIVED**

2007 JUN -5 A 11:40

**AZ CORP COMMISSION  
DOCKET CONTROL**

Ms. Candrea Allen  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007



RE: Cbeyond Communications, LLC's -- Response to Staff's 3<sup>rd</sup> set of Data Requests  
Docket No. T-~~12~~20497A-06-0802

Dear Ms. Allen:

Enclosed please find the response to Staff's 3rd set of data requests to Cbeyond Communications, LLC.

Sincerely,

Michael W. Patten

MWP:mi  
Enclosures  
cc: Docket Control

CBEYOND COMMUNICATIONS, LLC'S  
RESPONSES TO STAFF'S THIRD SET OF DATA REQUESTS  
DOCKET NO. T-20497A-06-0802  
June 5, 2007

Please make certain that each numbered item and each part of the item is answered completely. In order for Staff to continue with its review of this application, the following information must be submitted:

- 3.1 According to the Applicant's response to question (A-11) of the application, the Federal Communications Commission (FCC) has initiated an investigation against Cbeyond. Staff understands that Cbeyond submitted documents relating to the FCC investigation confidentially. Please explain in detail the nature of the information and why Cbeyond believes such information to be confidential and why a protective agreement is necessary.

**RESPONSE:**

Cbeyond seeks confidential treatment of the attached documents, because they contain detailed descriptions of Cbeyond's internal decision-making processes and business strategies that Cbeyond would not otherwise make publicly available. For example, the documents describe in significant detail Cbeyond's (1) internal procedures for selecting prospects for marketing campaigns; (2) employment policies and procedures; (3) procedures and processes for protecting proprietary data; and (4) compliance and internal auditing procedures. Also reflected in these documents are candid and detailed discussions with Cbeyond's senior management regarding these policies and procedures. Cbeyond would not release any of these documents in the ordinary course of business, because such release would result in serious competitive harm to Cbeyond.

This is the precisely the kind of information that government agencies treat as proprietary and to which access is granted, if at all, subject to strict protective order requirements. For example, the Federal Communications Commission ("FCC") has treated the exact information sought by the ACC here as proprietary. Indeed, the Freedom of Information Act permits the FCC to prevent any disclosure to the public of "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 47 U.S.C. § 552(b)(4). Cbeyond's internal procedures for identifying prospects for marketing campaigns, its employment policies and the other information subject to the instant request clearly qualify as "commercial information" that is privileged and confidential.

Even where the FCC grants access to this kind of information, it does so subject to the strict requirements of a protective order that limits access and use of the documents and information. For example, in its pending review of Qwest's petitions for forbearance from unbundling obligations, the FCC has established two separate protective orders, one for information that

CBeyond COMMUNICATIONS, LLC'S  
RESPONSES TO STAFF'S THIRD SET OF DATA REQUESTS  
DOCKET NO. T-20497A-06-0802  
June 5, 2007

submitting parties themselves designate as confidential and a second, stricter order, for "highly confidential information."<sup>1</sup> While all of the information subject to the instant request would be eligible for protection under the *Qwest First Protective Order* because Cbeyond has itself treated this information as confidential, some of the documents and information, such as those pertaining to "marketing strategies," would also be eligible for protection under the *Qwest Second Protective Order*. In all events, the information would and should be disclosed subject to a protective order "to facilitate and expedite the review of confidential information submitted by parties to th[e] proceeding, including privileged and confidential information, such as trade secrets or financial information."<sup>2</sup> There is no reason to treat the information subject to the instant request differently.

---

<sup>1</sup> See, e.g., *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. Section 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, First Protective Order, WC Docket No. 07-97, DA 07-2292 (rel. Jun. 1, 2007) ("*Qwest First Protective Order*"); *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. Section 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, Second Protective Order, WC Docket No. 07-97, DA 07-2293 (rel. Jun. 1, 2007) ("*Qwest Second Protective Order*").

<sup>2</sup> *Qwest First Protective Order* ¶ 1.

**ROSHKA DeWULF & PATTEN**

ROSHKA DeWULF & PATTEN, PLC  
ATTORNEYS AT LAW  
ONE ARIZONA CENTER  
400 EAST VAN BUREN STREET  
SUITE 800  
PHOENIX, ARIZONA 85004  
TELEPHONE NO 602-256-6100  
FACSIMILE 602-256-6800

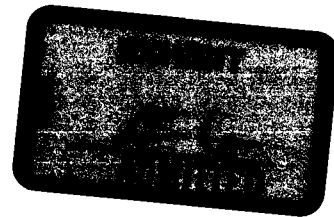
October 16, 2007

**RECEIVED**

2007 OCT 16 P 3:43

AZ CORP COMMISSION  
DOCKET CONTROL

Mr. Kevin Torrey, Esq.  
Legal Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007



RE: Cbeyond Communications, LLC's -- Response to Staff's 4<sup>th</sup> set of Data Requests  
Docket No. T-20497A-06-0802

Dear Mr. Torrey:

Enclosed please find the response to Staff's 4<sup>th</sup> set of data requests to Cbeyond Communications, LLC.

Sincerely,

Michael W. Patten

MWP:mi

Enclosures

cc: Docket Control  
Candrea Allen, Utilities Division

CBEYOND COMMUNICATIONS, LLC's  
RESPONSES TO  
STAFF'S FOURTH SET OF DATA REQUESTS  
DOCKET NO. T-20497A-06-0802  
October 16, 2007

Please make certain that each numbered item and each part of the item is answered completely. In order for Staff to continue with its review of this application, the following information must be submitted:

According to the Applicant's response to question (A-11) of the application, the Federal Communications Commission (FCC) has initiated an investigation against Cbeyond. Staff understands that Cbeyond submitted documents relating to the FCC investigation confidentially. Also, as supplemental information to Staff's Third Set of Data Requests, Staff was provided the list of Inquiries: Documents and Information to be Provided from the Federal Communications Commission Enforcement Bureau Investigations and Hearings Division (Enforcement Bureau), by Cbeyond.

- 4-1. Please provide the following information for each inquiry from the Enforcement Bureau that is listed below.
- A) Does Cbeyond consider the information in its response to the inquiry to be confidential? If yes, please explain in detail why Cbeyond considers this information confidential and describe in detail the information contained in the response to the inquiry.
  - B) If Cbeyond does not consider the information provided in its response to the inquiry to be confidential, please submit this information.
  - C) For each of the inquiries that include subparts (i.e. a, b, and c) please provide the information requested in 4-1 A and B for each individual subpart.

[List of FCC Inquiries Excluded]

RESPONSE: Attached is the FCC's order in the above referenced FCC docket. As previously communicated to Staff, all materials requested by the FCC were submitted confidentially to the FCC (see Response to Staff Data Request 3.1). CBeyond requests that the FCC order and accompanying consent decree be accepted in lieu of the voluminous and confidential filings provided in response to the FCC inquiries and which underlie the FCC order. The FCC has reviewed the information submitted in response to its specific inquiries and approved the Consent Decree attached to the order.

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	File No. EB-06-IH-0840
	)	
	)	
Cbeyond Communications, Inc.	)	NAL/Acct. No. 200632080153
	)	
	)	
Notice of Apparent Liability for Forfeiture	)	FRN: 0003759602

ORDER

Adopted: October 5, 2007

Released: October 9, 2007

By the Chief, Enforcement Bureau:

1. In this Order, the Enforcement Bureau ("Bureau") of the Federal Communications Commission ("FCC" or "Commission") adopts the attached Consent Decree entered into between the Bureau and Cbeyond Communications, Inc. ("Cbeyond"). The Consent Decree terminates a Notice of Apparent Liability for Forfeiture ("NAL") against Cbeyond for its apparent violation of section 222 of the Communications Act of 1934, as amended, ("the Act") and section 64.2009(e) of the Commission's rules.<sup>1</sup> In addition, the Consent decree terminates an investigation into Cbeyond's compliance with section 64.2007(a)(3) of the Commission's rules regarding customer proprietary network information ("CPNI").<sup>2</sup>

2. The Bureau and Cbeyond have negotiated the terms of a Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. Based on the record before the Bureau, and in the absence of material new evidence relating to this matter, the Bureau concludes that there are no substantial or material questions of fact as to whether Cbeyond possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

4. After reviewing the terms of the Consent Decree, the Bureau finds that the public interest would be served by adopting the Consent Decree and terminating the NAL and the investigation.

5. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 503 of the Communications Act of 1934, as amended,<sup>3</sup> that the attached Consent Decree IS ADOPTED.

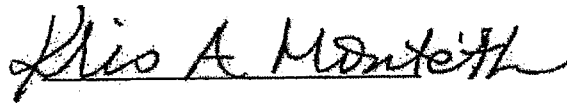
<sup>1</sup> 47 U.S.C. § 222; 47 C.F.R. § 64.2009(e).

<sup>2</sup> 47 C.F.R. § 64.2007(a)(3).

<sup>3</sup> 47 U.S.C. § 154(i).

6. IT IS FURTHER ORDERED that the above-captioned NAL is terminated.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in dark ink, appearing to read "Kris A. Monteith". The signature is fluid and cursive, with the first name "Kris" and last name "Monteith" clearly distinguishable.

Kris Anne Monteith  
Chief, Enforcement Bureau

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	File No. EB-06-IH-0840
	)	
	)	
Cbeyond Communications, Inc.	)	NAL Acct. No. 200632080153
	)	
	)	
Notice of Apparent Liability for Forfeiture	)	FRN: 0003759602

CONSENT DECREE

1. The Enforcement Bureau ("Bureau") of the Federal Communications Commission (the "FCC" or "Commission") and Cbeyond, Inc. ("Cbeyond"), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into possible noncompliance by Cbeyond with the requirements of section 222 of the Communications Act of 1934, as amended (the "Act"), and sections 64.2007(a) and 64.2009(e) of the Commission's rules.<sup>1</sup>

2. For purposes of this Consent Decree, the following definitions shall apply:

- a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
- b) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
- c) "Cbeyond" means Cbeyond, Inc., any of its affiliates and any successors or assigns.
- d) "CPNI" means customer proprietary network information as defined in 47 U.S.C. § 222(h)(1).
- e) "Commission" means the Federal Communications Commission.
- f) "Effective date" means the date on which the Commission releases the Adopting Order.
- g) "Investigation" means the investigation commenced on February 1, 2006 by the Bureau letter of inquiry regarding Cbeyond's compliance with 47 U.S.C. § 222 of the Act and 47 C.F.R. §§ 64.2001-2009 that resulted in the Bureau's issuance of the NAL on April 21, 2006.
- h) "NAL" means the proceeding commenced on April 21, 2006 by the Bureau Notice of Apparent Liability for Forfeiture against Cbeyond Communications, Inc. for the apparent violation of section 64.2009(e) of the Commission's rules, 47 C.F.R. § 64.2009(e).
- i) "Order" or "Adopting Order" means an Order of the Commission adopting the terms and conditions of this Consent Decree without change, addition, or modification, and formally terminating the above-captioned Investigation and NAL.
- j) "Parties" means Cbeyond and the Bureau.
- k) "Rules" means the Commission's regulations set forth in Title 47 of the Code of Federal Regulations.

<sup>1</sup> 47 U.S.C. § 222; 47 C.F.R. §§ 64.2007(a), 64.2009(e).

## I. BACKGROUND

3. Section 222 of the Act requires telecommunications carriers to ensure that CPNI is adequately protected from unauthorized disclosure. The Commission's rules effectuated pursuant to section 222 protect the privacy of CPNI collected and held by providers of communications services.<sup>2</sup> For example, section 64.2009(e) requires telecommunications carriers to sign annually a certificate stating that it has established adequate procedures to ensure compliance with the Commission's CPNI rules. Carriers must also provide a statement accompanying the certificate explaining how its operating procedures ensure compliance with the Commission's CPNI rules.<sup>3</sup> In addition, section 64.2007(a)(3) of the Commission's rules requires a carrier to obtain approval for the use of CPNI and to maintain records of any such approval for one year.<sup>4</sup>

4. Cbeyond is a competitive telecommunications carrier headquartered in Atlanta, Georgia that provides competitive local and long distance wireline and wireless services to small businesses.<sup>5</sup> The Enforcement Bureau has been investigating the adequacy of procedures implemented by telecommunications carriers to ensure confidentiality of CPNI based on concerns regarding the apparent availability to third parties of sensitive, personal subscriber information.<sup>6</sup>

5. As part of its inquiry to ascertain the adequacy of procedures implemented by telecommunications carriers to ensure the confidentiality of their subscribers' CPNI, the Bureau directed all carriers by Public Notice to submit their most recent certification prepared in compliance with section 64.2009(e) of the Commission's rules.<sup>7</sup> On February 6, 2006, Cbeyond failed to submit its CPNI certification. Instead, Cbeyond submitted a statement that it "has commenced a comprehensive internal

<sup>2</sup> *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket Nos. 96-115 and 96-149, Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998) ("CPNI Order"). See also *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket Nos. 96-115 and 96-149, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409 (1999); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; 2000 Biennial Regulatory Review -- Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket Nos. 95-115, 96-149 and 00-257, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860 (2002).

<sup>3</sup> 47 C.F.R. § 64.2009(e) states that "[a] telecommunications carrier must have an officer, as an agent of the carrier, sign a compliance certificate on an annual basis stating that the officer has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the rules in this subpart. The carrier must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is or is not in compliance with the rules in this subpart."

<sup>4</sup> 47 C.F.R. § 64.2007(a)(3) requires telecommunications carriers to maintain records of approval required for use of CPNI, whether oral, written or electronic, for one year.

<sup>5</sup> [www.Cbeyond.net](http://www.Cbeyond.net).

<sup>6</sup> Some companies, known as "data brokers," have advertised the availability of wireless and wireline subscriber information. See, e.g. <http://www.epic.org/privacy/iei/>

<sup>7</sup> *Enforcement Bureau Directs all Telecommunications Carriers to Submit CPNI Compliance Certifications*, Public Notice, 21 FCC Rcd 756 (Enf. Bur. rel Jan. 30, 2006); *Enforcement Bureau Opens New Docket for the February 6, 2006, Filing of CPNI*, Public Notice, 21 FCC Rcd 1122 (Enf. Bur. rel Feb. 2, 2006).

review of its operating procedures for CPNI compliance . . . [but] does not presently have documents responsive to this request." The Bureau concluded that Cbeyond's statement constituted an admission that Cbeyond was not in compliance with section 64.2009(e) of the Commission's rules because the company had not established operating procedures adequate to ensure compliance with the Commission's CPNI rules and on April 21, 2006 issued a Notice of Apparent Liability for Forfeiture ("NAL") proposing a forfeiture of \$100,000 for this apparent violation.

6. Following the NAL, Cbeyond filed with the Commission a certificate executed by its Vice President for Regulatory and Legislative Affairs stating that the Company had established operating procedures adequate to ensure compliance with the Commission's rules governing protection and use of CPNI. Cbeyond also provided information regarding the Company's security measures to protect consumer information.

7. At the same time, the Bureau also was investigating allegations that Cbeyond had obtained proprietary information from another carrier and used that information in violation of section 222(b) of the Act and section 64.2001 et seq. of the Commission's rules.<sup>8</sup> The Bureau sent a letter of inquiry to Cbeyond on February 1, 2006. Cbeyond responded to the inquiry letter on February 13, 2006. In May 2006, Cbeyond and the Bureau began discussions to settle the investigations and signed an agreement tolling the existing statute of limitations and extending the date on which Cbeyond was required to pay the forfeiture or submit a response to the NAL.

## II. AGREEMENT

8. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the Investigation between Cbeyond and the Bureau. In express reliance on the covenants and representations contained herein, the Bureau agrees to terminate the Investigation and the NAL. In consideration for the termination of this Investigation and NAL and in accordance with the terms of this Consent Decree, Cbeyond agrees to the terms, conditions and procedures contained herein.

9. Cbeyond agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

10. Cbeyond agrees to make a voluntary contribution to the United States Treasury, without further protest or recourse to a trial *de novo*, in the amount of \$200,000 within thirty (30) calendar days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include "Acct. No. 200632080153" and "FRN No. 0003759602." Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229.

11. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance by Cbeyond with the requirements of the Act or the Commission's rules or orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Cbeyond does not admit or deny any noncompliance, violation, or liability associated with or arising from its actions or omissions involving the Act or the Commission's rules that are the subject of this Consent

<sup>8</sup> Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to James Geiger, Chief Executive Officer, and Julia Strow, Vice President, Regulatory and Legislative Affairs, Cbeyond Communications, LLC, dated February 1, 2006 ("LOI").

Decree.

12. In consideration for the termination of the Investigation and NAL in accordance with the terms of this Consent Decree, Cbeyond agrees to submit to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, a copy of its most recent 64.2009(e) certification each year for the next two years no later than the anniversary of the Effective Date of this consent decree. In addition, Cbeyond agrees to continue to comply with the following practices and policies that it has already implemented:

- a) Cbeyond shall obtain written authorization from the customer of another carrier or provider of interconnected VoIP prior to accessing that customer's Customer Service Records ("CSRs") stored on the Operational Support Systems ("OSS") of such customer's service provider. Cbeyond shall maintain such written prior authorization (in hard-copy or via version-protected electronic copy) in a central location for two years from the date of the access and will make these records available to the FCC upon request.
- b) Cbeyond shall periodically inspect its written forms for obtaining prior approval as described in subparagraph a) to ensure that they are being filled out completely and properly.
- c) Cbeyond shall obtain a signed acknowledgement from each of its employees who might have access to Cbeyond customer CPNI stating that the employee understands Cbeyond's CPNI policy and that the employee agrees to comply with the terms of the policy. Violation of the policy will lead to disciplinary action up to and including termination.
- d) Cbeyond shall obtain a signed acknowledgement of Cbeyond's policy for obtaining access to the CPNI of other carriers or providers of interconnected VoIP (the "CSR policy") from each of its employees who might need to access CSRs stored in the OSS of other carriers or interconnected VoIP providers. The acknowledgement shall state that the employee understands Cbeyond's CSR policy and that the employee agrees to comply with the terms of the policy. Violation of this policy will lead to disciplinary action up to and including termination.
- e) Cbeyond shall conduct biannual CPNI policy and CSR policy training for all relevant employees, and Cbeyond shall also conduct monthly refresher training for its sales personnel to reinforce Cbeyond's CSR policies.
- f) Cbeyond shall place all terminals used for accessing CPNI in locations that allow for close supervision.
- g) Cbeyond shall utilize equipment and software that allows it to monitor and log websites being visited by individual computers in its network; Cbeyond shall analyze this information twice monthly to see if there are unusual usage patterns that might suggest improper use of CPNI or improper CSR access.

13. The Bureau agrees in the absence of new material evidence that it will not use the facts developed in this Investigation through the Effective Date or the existence of this Consent Decree to initiate, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Cbeyond concerning the matters that were the subject of the Investigation. The Bureau further agrees that it will not use the facts developed in the Investigation through the Effective Date or the existence of this Consent Decree to initiate, on its own motion, any proceeding, formal or informal, or take any action on its own motion against Cbeyond with respect to Cbeyond's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier, or with

respect to compliance with the Commission's rules and policies.

14. Nothing in this Consent Decree shall prevent the Commission or its delegated authority from considering or adjudicating any complaint that may be filed pursuant to section 208 of the Act, 47 U.S.C. § 208, and to take any action in response to such formal complaint. The Commission's adjudication of any such complaint will be based solely on the record established in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission or its delegated authority from investigating new evidence of noncompliance by Cbeyond of the Act, the Commission's rules, or the Order.

15. Cbeyond waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Order adopts this Consent Decree without change, addition, or modification.

16. Cbeyond's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Order that is consistent with this Consent Decree and adopts the Consent Decree without change, addition or modification.

17. In the event that this Consent Decree is rendered invalid by a court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

18. The Parties agree that if either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Order, neither Cbeyond nor the Commission shall contest the validity of the Consent Decree or the Order, and Cbeyond and the Commission will waive any statutory right to a trial *de novo* regarding the terms or validity of the Consent Decree.

19. The parties agree that this Consent Decree shall become effective on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of any term of this Consent Decree shall constitute a separate violation of a Commission order entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

20. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Cbeyond does not consent), that provision will be superseded by such Commission rule or order.

21. Cbeyond agrees that the provisions of this Consent Decree shall be binding on its successors and assigns.

22. Cbeyond agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.


23. Cbeyond and the Bureau each represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

24. By this Consent Decree, Cbeyond neither waives nor alters its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information.

25. Cbeyond agrees that any violation of the Order or of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

26. The Parties agree that the requirements of this Consent Decree shall expire twenty-four (24) months from the Effective Date.

27. This Consent Decree may be signed in counterparts.



Kris Anne Monteith  
Chief, Enforcement Bureau  
Federal Communications Commission

10/5/07  
Date



William H. Weber  
Vice-President and Corporate Counsel  
Cbeyond, Inc.

10/5/2007  
Date

William H. Weber  
Chief Administrative Officer  
320 Interstate North Parkway, SE  
Suite 300  
Atlanta, Georgia 30339  
direct dial: 678.370.2327  
william.weber@cbeyond.net

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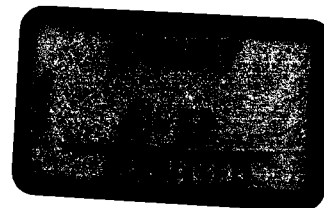
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May 1, 2008

**AZ CORP COMMISSION  
DOCKET CONTROL**

**VIA ELECTRONIC MAIL**

Mr. Wilfred Shand  
Utilities Division  
Arizona Corporation Commission  
1220 West Washington Street  
Phoenix, Arizona 85007



**Re: Docket No. T-20497A-06-0802, CCN Application of Cbeyond  
Communications, LLC**

Dear Mr. Shand:

Following our phone conversation yesterday, I thought it would be a good idea to provide you with additional background regarding Cbeyond itself, Cbeyond's CPNI practices and the FCC's recently concluded investigation of those practices.

Cbeyond is a publicly traded company with more than 35,000 business customers in twelve markets across the United States. Using T-1 circuits exclusively (both UNE and Special Access), we provide these customers with voice and data services over a 100% IP network. The applications that we provide to our customer include local, long distance, mobile services, Microsoft Exchange services, unified messaging, fax-to-email, web hosting, secure desktop and many other applications.

It is our goal to provide our small business customers with big business telecommunications tools, and this strategy has served us, our customers and our shareholders well. Our target market is small and medium businesses with between 5 and 249 employees. Our average customer has twelve employees and pays \$750 a month for our services. We expect to generate revenue of more than \$350m this year. We have never been through bankruptcy, have no debt and one of the lowest churn rates (1.3%) in the history of the industry. In 2006 we were one of the top ten fastest growing public companies in the country, and all of this growth has been organic: we have never purchased another company or grown our customer base through purchases.

Last year we entered three new cities, and this year we intend to do the same. In the first year after our market-entry, we build a direct-sales force of about 60 sales representatives. These are good jobs that go primarily to recent college graduates; our average pay in each market is in excess of \$80,000. 66% of our sales are made by this direct sales force, and the other sales come from referrals. Our growth model calls for us to gain significant market share in each city that we enter, and this is exactly what we do. In some of our earliest markets such as Atlanta and

May 1, 2008

Wil Shand

Re: Docket No. T-20497A-06-0802

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Denver, our share of the market of businesses in our target range exceeds 15%. Our primary competitor is always the local ILEC from which we get 70% of our new customers each month. We are able to capture this kind of market share because we are offering a unique value proposition that provides exceptional value to small businesses that are trying to succeed against larger competitors.

We have not experienced this kind of growth or maintained our industry-leading churn rates by mistreating our customers or their private information. *At no time in our history has a single Cbeyond customer alleged that Cbeyond did not properly safeguard its CPNI nor are we aware of any occurrence at any time of a CPNI breach.* So what was the FCC investigation which concluded last year about and how was it resolved? A discussion of this issue follows.

As I am sure you are aware, in 2005, the Federal Communications Commission ("FCC") issued new rules requiring all telecommunications carriers to certify that they had procedures in place to ensure the security of their customer's Customer Proprietary Network Information ("CPNI"). In investigating its internal procedures for protecting CPNI in preparation for making its required certification, Cbeyond discovered that certain parts of its organization were not following its internal procedures and—accordingly—informed the FCC of this. Cbeyond began immediate remedial action to ensure that all parts of its business were following appropriate CPNI procedures in accordance with Cbeyond's internal processes.

On April 21, 2006, the FCC issued a Notice of Apparent Liability ("NAL") proposing that Cbeyond be liable for a \$100,000 fine for a failure to follow CPNI procedures. The NAL was explicitly rescinded by the Consent Decree dated October 9, 2007, with the following language: "After reviewing the terms of the Consent Decree, the Bureau finds that the public interest would be served by adopting the Consent Decree and terminating the NAL and the investigation" (a copy of the consent decree is attached to this letter). The Consent Decree DID NOT find that Cbeyond violated the Commission's rules; nevertheless, as a part of the process that led to the Consent Decree, Cbeyond implemented a number of processes that we believe make Cbeyond's CPNI—some of the most protected information held by any telecommunications carrier in the country. Cbeyond was not fined by the FCC, but—as part of the Consent Decree—Cbeyond agreed to make a \$200,000 payment to the U.S. Treasury for (as detailed below) failing to maintain an internal CPNI certification document and for discovering through its own internal investigation that certain portions of its business were not following Cbeyond's policies and procedures. Today, as a result of its efforts, Cbeyond maintains a cutting-edge CPNI compliance program that is supervised by its Internal Audit department and integrated into its Sarbanes-Oxley compliance program. The process that led to the Consent Decree is described in more detail as follows:

Because Cbeyond did not immediately certify its compliance with the FCC's CPNI rules, the FCC issued a Notice of Apparent Liability ("NAL") on April 21, 2006, proposing a fine of \$100,000 for Cbeyond's failure to certify its procedures on time. *The NAL did not allege nor has the FCC ever alleged that any CPNI of any Cbeyond customer was ever compromised.* Many other companies including AT&T, Amp'd Mobile, CTC Communications and

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Re: Docket No. T-20497A-06-0802

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Easterbrooke Communications, among others, had similar NAL notices for precisely the same reason as the one issued to Cbeyond.

At the same time as this process was moving forward, BellSouth, in a filing with the FCC, made allegations claiming that Cbeyond had been accessing BellSouth customer information without properly executed Letters of Authority. Cbeyond ordered a comprehensive internal investigation conducted by an outside legal firm and found the allegations to be completely unfounded. The investigation did, however, confirm what Cbeyond already knew: not all parts of its organization had been properly following its internal CPNI procedures. Cbeyond shared the results of this investigation with the FCC which also conducted its own exhaustive investigation. At the conclusion of this process, the FCC—as memorialized in the Consent Decree of October 9, 2007—did not make any “legal finding or determination regarding any compliance or noncompliance by Cbeyond with the requirements of the [1996 Telecommunications] Act or the Commission’s rules or orders,” and Cbeyond did not admit to any noncompliance with the applicable rules because neither the FCC nor Cbeyond was able to discover any such noncompliance.

As the Decree notes, Cbeyond now has a comprehensive CPNI compliance program in place. This program is managed by Cbeyond’s Internal Audit department to ensure that all procedures are followed and is fully integrated in our Sarbanes-Oxley processes. To quote the Decree directly: “Cbeyond agrees to continue to comply with the following practices and policies that it has already implemented:

- a) Cbeyond shall obtain written authorization from the customer of another carrier or provider of interconnected VoIP prior to accessing that customer’s Customer Service Records (“CSRs”) stored on the Operational Support Systems (“OSS”) of such customer’s service provider. Cbeyond shall maintain such written prior authorization (in hard-copy or via version-protected electronic copy) in a central location for two years from the date of the access and will make these records available to the FCC upon request.
- b) Cbeyond shall periodically inspect its written forms for obtaining prior approval as described in subparagraph a) to ensure that they are being filled out completely and properly.
- c) Cbeyond shall obtain a signed acknowledgement from each of its employees who might have access to Cbeyond customer CPNI stating that the employee understands Cbeyond’s CPNI policy and that the employee agrees to comply with the terms of the policy. Violation of the policy will lead to disciplinary action up to and including termination.
- d) Cbeyond shall obtain a signed acknowledgement of Cbeyond’s policy for obtaining access to the CPNI of other carriers or providers of interconnected VoIP (the “CSR policy”) from each of its employees who might need to access CSRs stored in the OSS of other carriers or interconnected VoIP providers. The acknowledgement shall state that the employee understands Cbeyond’s CSR policy and that the employee agrees to comply with the terms of the policy. Violation of this policy will lead to disciplinary action up to

May 1, 2008

Wil Shand

Re: Docket No. T-20497A-06-0802

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and including termination.

- e) Cbeyond shall conduct biannual CPNI policy and CSR policy training for all relevant employees, and Cbeyond shall also conduct monthly refresher training for its sales personnel to reinforce Cbeyond's CSR policies.
- f) Cbeyond shall place all terminals used for accessing CPNI in locations that allow for close supervision.
- g) Cbeyond shall utilize equipment and software that allows it to monitor and log websites being visited by individual computers in its network; Cbeyond shall analyze this information twice monthly to see if there are unusual usage patterns that might suggest improper use of CPNI or improper CSR access."

I hope this background information is helpful to you in your process of evaluating our application. We are very excited about opportunities for growth in Arizona, and we are hopeful that we can begin offering service there shortly. If you have any questions or concerns, please feel free to contact me directly. At your convenience, I can also come to Phoenix to discuss our application.

Sincerely,



William H. Weber

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	File No. EB-06-IH-0840
	)	
	)	
Cbeyond Communications, Inc.	)	NAL/Acct. No. 200632080153
	)	
	)	
Notice of Apparent Liability for Forfeiture	)	FRN: 0003759602

ORDER

Adopted: October 5, 2007

Released: October 9, 2007

By the Chief, Enforcement Bureau:

1. In this Order, the Enforcement Bureau ("Bureau") of the Federal Communications Commission ("FCC" or "Commission") adopts the attached Consent Decree entered into between the Bureau and Cbeyond Communications, Inc. ("Cbeyond"). The Consent Decree terminates a Notice of Apparent Liability for Forfeiture ("NAL") against Cbeyond for its apparent violation of section 222 of the Communications Act of 1934, as amended, ("the Act") and section 64.2009(e) of the Commission's rules.<sup>1</sup> In addition, the Consent decree terminates an investigation into Cbeyond's compliance with section 64.2007(a)(3) of the Commission's rules regarding customer proprietary network information ("CPNI").<sup>2</sup>

2. The Bureau and Cbeyond have negotiated the terms of a Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. Based on the record before the Bureau, and in the absence of material new evidence relating to this matter, the Bureau concludes that there are no substantial or material questions of fact as to whether Cbeyond possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

4. After reviewing the terms of the Consent Decree, the Bureau finds that the public interest would be served by adopting the Consent Decree and terminating the NAL and the investigation.

5. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 503 of the Communications Act of 1934, as amended,<sup>3</sup> that the attached Consent Decree IS ADOPTED.

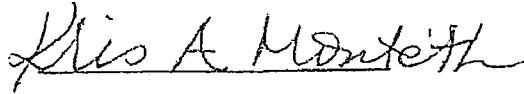
<sup>1</sup> 47 U.S.C. § 222; 47 C.F.R. § 64.2009(e).

<sup>2</sup> 47 C.F.R. § 64.2007(a)(3).

<sup>3</sup> 47 U.S.C. § 154(i).

6. IT IS FURTHER ORDERED that the above-captioned NAL is terminated.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "Kris A. Monteith". The signature is written in dark ink and is positioned above the printed name and title.

Kris Anne Monteith  
Chief, Enforcement Bureau

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	File No. EB-06-IH-0840
	)	
Cbeyond Communications, Inc.	)	NAL Acct. No. 200632080153
	)	
Notice of Apparent Liability for Forfeiture	)	FRN: 0003759602

**CONSENT DECREE**

1. The Enforcement Bureau ("Bureau") of the Federal Communications Commission (the "FCC" or "Commission") and Cbeyond, Inc. ("Cbeyond"), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into possible noncompliance by Cbeyond with the requirements of section 222 of the Communications Act of 1934, as amended (the "Act"), and sections 64.2007(a) and 64.2009(e) of the Commission's rules.<sup>1</sup>

2. For purposes of this Consent Decree, the following definitions shall apply:

- a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
- b) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
- c) "Cbeyond" means Cbeyond, Inc., any of its affiliates and any successors or assigns.
- d) "CPNI" means customer proprietary network information as defined in 47 U.S.C. § 222(h)(1).
- e) "Commission" means the Federal Communications Commission.
- f) "Effective date" means the date on which the Commission releases the Adopting Order.
- g) "Investigation" means the investigation commenced on February 1, 2006 by the Bureau letter of inquiry regarding Cbeyond's compliance with 47 U.S.C. § 222 of the Act and 47 C.F.R. §§ 64.2001-2009 that resulted in the Bureau's issuance of the NAL on April 21, 2006.
- h) "NAL" means the proceeding commenced on April 21, 2006 by the Bureau Notice of Apparent Liability for Forfeiture against Cbeyond Communications, Inc. for the apparent violation of section 64.2009(e) of the Commission's rules, 47 C.F.R. § 64.2009(e).
- i) "Order" or "Adopting Order" means an Order of the Commission adopting the terms and conditions of this Consent Decree without change, addition, or modification, and formally terminating the above-captioned Investigation and NAL.
- j) "Parties" means Cbeyond and the Bureau.
- k) "Rules" means the Commission's regulations set forth in Title 47 of the Code of Federal Regulations.

<sup>1</sup> 47 U.S.C. § 222; 47 C.F.R. §§ 64.2007(a), 64.2009(e).

## I. BACKGROUND

3. Section 222 of the Act requires telecommunications carriers to ensure that CPNI is adequately protected from unauthorized disclosure. The Commission's rules effectuated pursuant to section 222 protect the privacy of CPNI collected and held by providers of communications services.<sup>2</sup> For example, section 64.2009(e) requires telecommunications carriers to sign annually a certificate stating that it has established adequate procedures to ensure compliance with the Commission's CPNI rules. Carriers must also provide a statement accompanying the certificate explaining how its operating procedures ensure compliance with the Commission's CPNI rules.<sup>3</sup> In addition, section 64.2007(a)(3) of the Commission's rules requires a carrier to obtain approval for the use of CPNI and to maintain records of any such approval for one year.<sup>4</sup>

4. Cbeyond is a competitive telecommunications carrier headquartered in Atlanta, Georgia that provides competitive local and long distance wireline and wireless services to small businesses.<sup>5</sup> The Enforcement Bureau has been investigating the adequacy of procedures implemented by telecommunications carriers to ensure confidentiality of CPNI based on concerns regarding the apparent availability to third parties of sensitive, personal subscriber information.<sup>6</sup>

5. As part of its inquiry to ascertain the adequacy of procedures implemented by telecommunications carriers to ensure the confidentiality of their subscribers' CPNI, the Bureau directed all carriers by Public Notice to submit their most recent certification prepared in compliance with section 64.2009(e) of the Commission's rules.<sup>7</sup> On February 6, 2006, Cbeyond failed to submit its CPNI certification. Instead, Cbeyond submitted a statement that it "has commenced a comprehensive internal

<sup>2</sup> *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket Nos. 96-115 and 96-149, Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 (1998) ("CPNI Order"). See also *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket Nos. 96-115 and 96-149, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409 (1999); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*; 2000 Biennial Regulatory Review -- Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket Nos. 95-115, 96-149 and 00-257, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860 (2002).

<sup>3</sup> 47 C.F.R. § 64.2009(e) states that "[a] telecommunications carrier must have an officer, as an agent of the carrier, sign a compliance certificate on an annual basis stating that the officer has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the rules in this subpart. The carrier must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is or is not in compliance with the rules in this subpart."

<sup>4</sup> 47 C.F.R. § 64.2007(a)(3) requires telecommunications carriers to maintain records of approval required for use of CPNI, whether oral, written or electronic, for one year.

<sup>5</sup> [www.Cbeyond.net](http://www.Cbeyond.net).

<sup>6</sup> Some companies, known as "data brokers," have advertised the availability of wireless and wireline subscriber information. See, e.g. <http://www.epic.org/privacy/iei/>

<sup>7</sup> *Enforcement Bureau Directs all Telecommunications Carriers to Submit CPNI Compliance Certifications*, Public Notice, 21 FCC Rcd 756 (Enf. Bur. rel Jan. 30, 2006); *Enforcement Bureau Opens New Docket for the February 6, 2006, Filing of CPNI*, Public Notice, 21 FCC Rcd 1122 (Enf. Bur. rel Feb. 2, 2006).

review of its operating procedures for CPNI compliance . . . [but] does not presently have documents responsive to this request." The Bureau concluded that Cbeyond's statement constituted an admission that Cbeyond was not in compliance with section 64.2009(e) of the Commission's rules because the company had not established operating procedures adequate to ensure compliance with the Commission's CPNI rules and on April 21, 2006 issued a Notice of Apparent Liability for Forfeiture ("NAL") proposing a forfeiture of \$100,000 for this apparent violation.

6. Following the NAL, Cbeyond filed with the Commission a certificate executed by its Vice President for Regulatory and Legislative Affairs stating that the Company had established operating procedures adequate to ensure compliance with the Commission's rules governing protection and use of CPNI. Cbeyond also provided information regarding the Company's security measures to protect consumer information.

7. At the same time, the Bureau also was investigating allegations that Cbeyond had obtained proprietary information from another carrier and used that information in violation of section 222(b) of the Act and section 64.2001 et seq. of the Commission's rules.<sup>8</sup> The Bureau sent a letter of inquiry to Cbeyond on February 1, 2006. Cbeyond responded to the inquiry letter on February 13, 2006. In May 2006, Cbeyond and the Bureau began discussions to settle the investigations and signed an agreement tolling the existing statute of limitations and extending the date on which Cbeyond was required to pay the forfeiture or submit a response to the NAL.

## II. AGREEMENT

8. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the Investigation between Cbeyond and the Bureau. In express reliance on the covenants and representations contained herein, the Bureau agrees to terminate the Investigation and the NAL. In consideration for the termination of this Investigation and NAL and in accordance with the terms of this Consent Decree, Cbeyond agrees to the terms, conditions and procedures contained herein.

9. Cbeyond agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

10. Cbeyond agrees to make a voluntary contribution to the United States Treasury, without further protest or recourse to a trial *de novo*, in the amount of \$200,000 within thirty (30) calendar days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include "Acct. No. 200632080153" and "FRN No. 0003759602." Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229.

11. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance by Cbeyond with the requirements of the Act or the Commission's rules or orders. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Cbeyond does not admit or deny any noncompliance, violation, or liability associated with or arising from its actions or omissions involving the Act or the Commission's rules that are the subject of this Consent

<sup>8</sup> Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to James Geiger, Chief Executive Officer, and Julia Strow, Vice President, Regulatory and Legislative Affairs, Cbeyond Communications, LLC, dated February 1, 2006 ("LOI").

Decree.

12. In consideration for the termination of the Investigation and NAL in accordance with the terms of this Consent Decree, Cbeyond agrees to submit to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, a copy of its most recent 64.2009(e) certification each year for the next two years no later than the anniversary of the Effective Date of this consent decree. In addition, Cbeyond agrees to continue to comply with the following practices and policies that it has already implemented:

- a) Cbeyond shall obtain written authorization from the customer of another carrier or provider of interconnected VoIP prior to accessing that customer's Customer Service Records ("CSRs") stored on the Operational Support Systems ("OSS") of such customer's service provider. Cbeyond shall maintain such written prior authorization (in hard-copy or via version-protected electronic copy) in a central location for two years from the date of the access and will make these records available to the FCC upon request.
- b) Cbeyond shall periodically inspect its written forms for obtaining prior approval as described in subparagraph a) to ensure that they are being filled out completely and properly.
- c) Cbeyond shall obtain a signed acknowledgement from each of its employees who might have access to Cbeyond customer CPNI stating that the employee understands Cbeyond's CPNI policy and that the employee agrees to comply with the terms of the policy. Violation of the policy will lead to disciplinary action up to and including termination.
- d) Cbeyond shall obtain a signed acknowledgement of Cbeyond's policy for obtaining access to the CPNI of other carriers or providers of interconnected VoIP (the "CSR policy") from each of its employees who might need to access CSRs stored in the OSS of other carriers or interconnected VoIP providers. The acknowledgement shall state that the employee understands Cbeyond's CSR policy and that the employee agrees to comply with the terms of the policy. Violation of this policy will lead to disciplinary action up to and including termination.
- e) Cbeyond shall conduct biannual CPNI policy and CSR policy training for all relevant employees, and Cbeyond shall also conduct monthly refresher training for its sales personnel to reinforce Cbeyond's CSR policies.
- f) Cbeyond shall place all terminals used for accessing CPNI in locations that allow for close supervision.
- g) Cbeyond shall utilize equipment and software that allows it to monitor and log websites being visited by individual computers in its network; Cbeyond shall analyze this information twice monthly to see if there are unusual usage patterns that might suggest improper use of CPNI or improper CSR access.

13. The Bureau agrees in the absence of new material evidence that it will not use the facts developed in this Investigation through the Effective Date or the existence of this Consent Decree to initiate, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Cbeyond concerning the matters that were the subject of the Investigation. The Bureau further agrees that it will not use the facts developed in the Investigation through the Effective Date or the existence of this Consent Decree to initiate, on its own motion, any proceeding, formal or informal, or take any action on its own motion against Cbeyond with respect to Cbeyond's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier, or with

respect to compliance with the Commission's rules and policies.

14. Nothing in this Consent Decree shall prevent the Commission or its delegated authority from considering or adjudicating any complaint that may be filed pursuant to section 208 of the Act, 47 U.S.C. § 208, and to take any action in response to such formal complaint. The Commission's adjudication of any such complaint will be based solely on the record established in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission or its delegated authority from investigating new evidence of noncompliance by Cbeyond of the Act, the Commission's rules, or the Order.

15. Cbeyond waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Order adopts this Consent Decree without change, addition, or modification.

16. Cbeyond's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Order that is consistent with this Consent Decree and adopts the Consent Decree without change, addition or modification.

17. In the event that this Consent Decree is rendered invalid by a court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

18. The Parties agree that if either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Order, neither Cbeyond nor the Commission shall contest the validity of the Consent Decree or the Order, and Cbeyond and the Commission will waive any statutory right to a trial *de novo* regarding the terms or validity of the Consent Decree.

19. The parties agree that this Consent Decree shall become effective on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of any term of this Consent Decree shall constitute a separate violation of a Commission order entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

20. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Cbeyond does not consent), that provision will be superseded by such Commission rule or order.

21. Cbeyond agrees that the provisions of this Consent Decree shall be binding on its successors and assigns.

22. Cbeyond agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

23. Cbeyond and the Bureau each represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

24. By this Consent Decree, Cbeyond neither waives nor alters its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information.

25. Cbeyond agrees that any violation of the Order or of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

26. The Parties agree that the requirements of this Consent Decree shall expire twenty-four (24) months from the Effective Date.

27. This Consent Decree may be signed in counterparts.



Kris Anne Monteith  
Chief, Enforcement Bureau  
Federal Communications Commission

10/5/07  
Date



William H. Weber  
Vice-President and Corporate Counsel  
Cbeyond, Inc.

10/5/2007  
Date

**FILE COPY**

MEMORANDUM

RE

TO: Docket Control

FROM: Ernest G. Johnson  
*for* Director  
Utilities Division

DATE: July 17, 2008

RE: IN THE MATTER OF THE APPLICATION OF CBEYOND COMMUNICATIONS, LLC FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE FACILITIES BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES AS WELL AS RESOLD LONG DISTANCE TELECOMMUNICATIONS SERVICES  
DOCKET NO. T-20497A-06-0802

Attached is the Staff Report for the above referenced application. The applicant is applying for approval to provide the following services:

- Facilities-Based Local Exchange Services
- Resold Long Distance Services

Staff is recommending approval of the application.

Originator: Candrea Allen

Attachment: Original and thirteen Copies

**RECEIVED**

JUL 17 2008

LEGAL DIV.  
ARIZ. CORPORATION COMMISSION

SERVICE LIST FOR: Cbeyond Communications, LLC  
DOCKET NO. T-20497A-06-0802

Mr. Michael Patten  
Roshka DeWulf & Patten, PLC  
One Arizona Center  
400 East Van Buren Street, Suite 800  
Phoenix, Arizona 85004

Ms. Janice Alward  
Chief Counsel, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Mr. Ernest G. Johnson  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ms. Lyn Farmer  
Chief Administrative Law Judge, Hearing Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

CBEYOND COMMUNICATIONS, LLC  
DOCKET NO. T-20497A-06-0802

IN THE MATTER OF THE APPLICATION OF CBEYOND COMMUNICATIONS, LLC FOR  
APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE  
FACILITIES BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES AS  
WELL AS RESOLD LONG DISTANCE TELECOMMUNICATIONS SERVICES

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JULY 17, 2008

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## STAFF ACKNOWLEDGEMENT

The Staff Report for the application of Cbeyond Communications, LLC for approval of a Certificate of Convenience and Necessity to provide Facilities Based Local Exchange Telecommunications Services as well as Resold Long Distance Telecommunications Services (Docket No. T-20497A-06-0802) was the responsibility of the staff member listed below. Candrea Allen was responsible for the review and analysis of the application.

A handwritten signature in black ink, appearing to read 'Candrea Allen', written over a horizontal line.

Candrea Allen  
Executive Consultant I

## 1. INTRODUCTION

On December 28, 2006, Cbeyond Communications, LLC ("Cbeyond" or "Applicant" or "Company") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide facilities-based local exchange and resold long distance telecommunications services within the State of Arizona. The Applicant petitioned the Arizona Corporation Commission ("Commission") for a determination that its proposed services should be classified as competitive.

Staff's review of this application addresses the overall fitness of the Applicant to receive a CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive and if the Applicant's initial rates are just and reasonable.

### *1.1 Technical Capability to Provide the Requested Services*

Cbeyond indicated that it currently provides telecommunications services in California, Colorado, Georgia, Illinois, and Texas. The Applicant also indicated that it is authorized to provide services in Florida, Massachusetts, Michigan, Minnesota, Missouri, New York, North Carolina, Pennsylvania, Virginia, Washington, and the District of Columbia. Based on this, Staff believes Cbeyond possesses the technical capabilities to provide the services it is requesting the authority to provide.

### *1.2 Financial Capability to Provide the Requested Services*

The Applicant provided audited financial statements of its parent company, Cbeyond, Inc., for the year ending December 31, 2006. These financial statements list assets of \$144,393; equity of \$91,108; and a net income of \$7,780. The Applicant provided notes related to the financial statements.

The Applicant states in its Local Exchange Telecommunications Services Tariff (reference Sections 2.10 and 2.11 on Page 22) that it may collect deposits from its local exchange service or interexchange service customers. The Applicant also states that it will not require advanced payments from its local exchange or interexchange service customers. Staff recommends that the Applicant procure a performance bond or an irrevocable sight draft Letter of Credit equal to \$110,000. The minimum bond or draft amount of \$110,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The performance bond or irrevocable sight draft Letter of Credit amount should be increased in increments of \$55,000. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$11,000 of the bond amount. If the Applicant desires to discontinue service, it must file an application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, the Applicant must notify each of its customers and the Commission 60 days prior to filing an application to discontinue service. Failure to meet this requirement should result in forfeiture of the Applicant's performance bond or irrevocable sight draft Letter of Credit. Staff further recommends that proof of the above

mentioned performance bond or irrevocable sight draft Letter of Credit be docketed within 30 days of the effective date of an Order in this matter and must remain in effect until further order of the Commission.

### ***1.3 Establishing Rates and Charges***

The Applicant would initially be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

Both an initial rate (the actual rate to be charged) and a maximum rate must be listed for each competitive service offered, provided that the rate for the service is not less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Company indicating that its fair value rate base is zero. Accordingly, the Company's fair value rate base is too small to be useful in a fair value analysis. On December 28, 2006, Cbeyond submitted a tariff reflecting the actual rates that Cbeyond will be charging for its local and interexchange services. Staff has reviewed these rates and believes they are comparable to the rates charged by competitive local carriers, local incumbent carriers, and major long distance carriers operating in the State of Arizona. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value rate base information provided should not be given substantial weight in this analysis.

## **2. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES**

Issues related to the provision of that Local Exchange service are discussed below.

### ***2.1 Number Portability***

The Commission has adopted rules to address number portability in a competitive telecommunications services market. Local exchange competition may not be vigorous if customers, especially business customers, must change their telephone numbers to take advantage of a competitive local exchange carrier's service offerings. Consistent with federal laws, federal rules and A.A.C. R14-2-1308(A), the Applicant shall make number portability available to facilitate the ability of a customer to switch between authorized local carriers within

a given wire center without changing their telephone number and without impairment to quality, functionality, reliability or convenience of use.

## ***2.2 Provision of Basic Telephone Service and Universal Service***

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

## ***2.3 Quality of Service***

Staff believes that the Applicant should be ordered to abide by the quality of service standards that were approved by the Commission for Qwest (fka USWC) in Docket No. T-0105 1B-93-0183 (Decision No. 59421). Because the penalties developed in that docket were initiated because Qwest's level of service was not satisfactory and the Applicant does not have a similar history of service quality problems, Staff does not recommend that those penalties apply to the Applicant. In the competitive market that the Applicant wishes to enter, the Applicant generally will have no market power and will be forced to provide a satisfactory level of service or risk losing its customers. Therefore, Staff believes that it is unnecessary to subject the Applicant to those penalties at this time.

## ***2.4 Access to Alternative Local Exchange Providers***

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. There may be areas where the Applicant installs the only local exchange service facilities. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. This way, an alternative local exchange service provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

## ***2.5 911 Service***

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications services market. The Applicant has certified that in accordance with A.A.C. R14-2-1201 (6)(d) and Federal Communications Commission 47 CFR Sections 64.3001 and 64.3002, it will provide all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service.

## **2.6 Custom Local Area Signaling Service**

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per-call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

## **3. REVIEW OF COMPLAINT INFORMATION**

The Applicant indicated that it has neither had an application for service denied, nor revoked in any state. Consumer Services reports no complaint history within Arizona. The Applicant indicated that none of its officers, directors or partners has been involved in any civil or criminal investigations, or any formal or informal complaints. The Applicant also indicated that none of its officers, directors or partners has been convicted of any criminal acts in the past ten (10) years.

On April 21, 2006, the Enforcement Bureau (the "Bureau") of the Federal Communications Commission ("FCC") issued a Notice of Apparent Liability for Forfeiture ("NAL").<sup>1</sup> The Bureau had determined that Cbeyond had failed to produce and make publicly available an annual certificate stating that the Company had adequate operating procedures to ensure compliance with section 64.2009(e) of the FCC's rules concerning Customer Proprietary Network Information ("CPNI").<sup>2</sup> The Bureau found that Cbeyond was liable for a monetary forfeiture of \$100,000 for violating section 64.2009(e) of the FCC's rules and the CPNI Order. In response to Staff's Second and Fourth Sets of Data Requests, Cbeyond filed, on October 16, 2007, the Bureau's Order and Consent Decree between Cbeyond and the Bureau dated October 9, 2007.<sup>3</sup> In the FCC order, the Bureau terminated the NAL. The Bureau also entered into a Consent Decree with Cbeyond. The Consent Decree stated that during the time frame that Cbeyond was issued the NAL, the Bureau was investigating allegations that Cbeyond received proprietary information from another carrier and used the information obtained in violation of the Communications Act of 1934, as amended, and the FCC's rules. The agreement between the Bureau and Cbeyond consisted of (1) the termination of the NAL and the Investigation in accordance with the Consent Decree, (2) the voluntary contribution to the United States Treasury in the amount of \$200,000 by Cbeyond, (3) Cbeyond agreeing to submit to the Bureau annual certification of compliance with the FCC's CPNI rules, and (4) Cbeyond agreeing to continue with the operating procedures established by the Company to ensure compliance with the FCC's

<sup>1</sup> See FCC Notice of Apparent Liability and Forfeiture DA 06-916

<sup>2</sup> See 47 C.F.R. § 64.2009(e); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, Order and Further Notice of Proposed Rule Making, 13 FCC Rcd 8061 (1998) ("CPNI Order")

<sup>3</sup> See FCC Consent Decree DA 07-4090

CPNI rules. The Consent Decree is scheduled to expire twenty four months from the effective date of the Bureau Order which was adopted on October 5, 2007.

Staff was able to obtain the following information from the five State Commissions (California, Colorado, Georgia, Illinois, and Texas) in which Cbeyond currently provides service:

State	No. Complaints	No. of Complaints Resolved in Favor of the Customer
Colorado	34	5
Georgia <sup>4</sup>	39	N/A
Illinois	3	0
Texas	30	2

According to the California Commission Staff, there have been no complaints filed against Cbeyond. In Colorado from June 2006 to June 2008, thirty-four complaints were filed against Cbeyond, and all have been closed. The five complaints filed in Colorado that were resolved in favor of the customer were billing (one complaint), cramming (one complaint), and slamming (three complaints) issues. The customer complaints filed in Georgia were from 2001 to 2007, and all have been closed. Staff was not able to obtain any details from the Georgia Commission Staff about the resolution of the complaints. The three complaints that were filed in Illinois from September 2006 through January 2007 were all service complaints (service availability, service reconnection/disconnection, and service interruption) and all have been closed. Of the thirty complaints filed in Texas from March 2005 to December 2006, only two complaints were resolved in favor of the customers: a quality of service issue and a telephone solicitation matter.

#### 4. COMPETITIVE SERVICES ANALYSIS

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive.

##### *4.1 Competitive Services Analysis for Local Exchange Services*

##### *4.1.1 A Description Of The General Economic Conditions That Exist Which Makes The Relevant Market For The Service One That Is Competitive.*

The local exchange market that the Applicant seeks to enter is one in which a number of new CLECs have been authorized to provide local exchange service. Nevertheless, ILECs hold a virtual monopoly in the local exchange service market. At locations where

---

<sup>4</sup> Because Staff was not able to obtain information from the Georgia Commission Staff relative to the resolution of the complaints that were filed, the information that was provided was not given substantial weight in this analysis.

ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, the Applicant will have to compete with those companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments.

*4.1.2 The number of alternative providers of the service.*

Qwest and various independent LECs are the primary providers of local exchange service in the State. Several CLECs and local exchange resellers are also providing local exchange service.

*4.1.3 The estimated market share held by each alternative provider of the service.*

Since Qwest and the independent LECs are the primary providers of local exchange service in the State, they have a large share of the market. Since the CLEC and local exchange resellers have only recently been authorized to offer service they have limited market share.

*4.1.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.*

None.

*4.1.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.*

ILECs have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly many of the CLECs and local exchange resellers also offer substantially similar services.

*4.1.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).*

The local exchange service market is:

- a. One in which ILECs own networks that reach nearly every residence and business in their service territories and which provide them with a virtual monopoly over local exchange service. New entrants are also beginning to enter this market.
- b. One in which new entrants will be dependent upon ILECs:

1. To terminate traffic to customers.
  2. To provide essential local exchange service elements until the entrant's own network has been built.
  3. For interconnection.
- c. One in which ILECs have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market and one in which new entrants do not have a long history with any customers.
- d. One in which most customers have few, if any choices since there is generally only one provider of local exchange service in each service territory.
- e. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

#### ***4.2 Competitive Services Analysis for Interexchange Services***

##### ***4.2.1 A description of the general economic conditions that exist, which makes the relevant market for the service one that, is competitive.***

The interexchange market that the Applicant seeks to enter is one in which numerous facilities-based and resold interexchange carriers have been authorized to provide service throughout the State. The Applicant will be a new entrant in this market and, as such, will have to compete with those companies in order to obtain customers.

##### ***4.2.2 The number of alternative providers of the service.***

There are a large number of facilities-based and resold interexchange carriers providing both interLATA and intraLATA interexchange service throughout the State. In addition, various ILECs provide intraLATA interexchange service in many areas of the State.

##### ***4.2.3 The estimated market share held by each alternative provider of the service.***

The large facilities-based interexchange carriers (AT&T, Sprint, MCI WorldCom, etc.) hold a majority of the interLATA interexchange market, and the ILECs provide a large portion of the intraLATA interexchange market. Numerous other interexchange carriers have a smaller part of the market and one in which new entrants do not have a long history with any customers.

##### ***4.2.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14- 2-801.***

None.

*4.2.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions.*

Both facilities-based and resold interexchange carriers have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly, many of the ILECs offer similar intraLATA toll services.

*4.2.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).*

The interexchange service market is:

- a. One with numerous competitors and limited barriers to entry.
- b. One in which established interexchange carriers have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market.
- c. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

## **5. RECOMMENDATIONS**

The following sections contain the Staff recommendations on the application for a CC&N and the Applicant's petition for a Commission determination that its proposed services should be classified as competitive.

### ***5.1 Recommendations on the Application for a CC&N***

Staff recommends that the Applicant's application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant comply with all Commission Rules, Orders, and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abide by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;

4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address, or telephone number;
5. That the Applicant cooperate with Commission investigations including, but not limited to, customer complaints;
6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Company and has determined that its fair value rate base is zero. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other competitive local carriers, local incumbent carriers, and major long distance companies offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis;
7. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
8. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;
9. That the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services;
10. That the Applicant submit interexchange tariffs which state that it does not collect advances, deposits, and/or prepayments;
11. That Cbeyond be required to file with the Commission in this docket, copies of the certifications sent to the FCC stating the Company's compliance with the FCC's rules concerning CPNI. Staff also recommends that Cbeyond be required to file these certifications with the Commission for twenty-four month subsequent to a Decision in this matter.
12. That Cbeyond be required to continue operating under the operating procedures established by the Company to ensure compliance with the FCC's CPNI rules as specified in the Consent Decree until further Order of the Commission.

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void, after due process without further order of the Commission and no time extensions shall be granted.

1. The Applicant shall docket conforming tariffs for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the application and shall state that the Applicant does not collect advances, deposits and/or prepayments from its customers.
2. The Applicant shall:
  - a. Procure a performance bond or irrevocable sight draft Letter of Credit in the amount of \$110,000. The minimum performance bond or irrevocable sight draft Letter of Credit amount of \$110,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The performance bond or irrevocable sight draft Letter of Credit amount should be increased in increments of \$55,000. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$11,000 of the performance bond or irrevocable sight draft Letter of Credit amount.
  - b. Staff recommends that Cbeyond file the original performance bond or irrevocable sight draft Letter of Credit with the Commission's Business Office and copies of the performance bond or irrevocable sight draft Letter of Credit with Docket Control, as a compliance item in this docket, within 30 days of the effective date of a decision in this matter. The performance bond or irrevocable sight draft Letter of Credit must remain in effect until further order of the Commission. The Commission may draw on the performance bond or irrevocable sight draft Letter of Credit, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is in default of its obligations arising from its Certificate. The Commission may use the performance bond or irrevocable sight draft Letter of Credit funds, as appropriate, to protect the Company's customers and the public interest and to take any and all actions the Commission deems necessary, in its discretion, including, but not limited to, returning prepayments or deposits collected from the Company's customers.

***5.2 Recommendation on the Applicant's Petition to have Proposed Services Classified as Competitive***

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange or interexchange service markets where alternative providers of

telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.